Box Elder County Land Use Management & Development Code

Article 2 – Administration & Enforcement

Chapter 2-1 Decision Making Bodies and Officials

Box Elder Zoning Ordinance as Adopted October 2007

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2-1-010. Purpose.

The purpose of this Chapter is to set forth the authority of decisionmaking bodies and officials responsible for administering the provisions of this Code.

2-1-020. Scope.

The authority of the decision making bodies and officials set forth in this Chapter shall apply to the entirety of this Code, subject to its various provisions.

2-1-030. Definitions.

Certain words and phrases in this Chapter are defined in Chapter 1-3 of this Code.

2-1-040. Legislative Authority.

A. **For the purposes of this Code, the Box Elder County Commission will serve as the legislative authority.** See the County Commission powers and duties set for in *Utah Code Annotated §17-50-302,* as amended.

B. **Powers and Duties Related to this Code.** In addition to the powers and duties of the County Commission set forth in Subsection (A) of this section, in administering this Code the County Commission shall have 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 Code.

1. Establish a county-wide planning commission for the unincorporated areas of the county which will serve as the land use authority for the county;
2. Adopt, modify, or reject a proposed General Plan or any amendment thereto for all or part of the unincorporated area of the County;
3. Adopt, modify, or reject proposed amendments to the text of this Code and to the zoning map; and
4. Establish a fee schedule for applications required by provisions of this Code;
5. Approve or not approve land use applications which have been reviewed by the Planning Commission.

2-1-050. Land Use Authority.

A. Established as the Land Use Authority. A Planning Commission, consisting of seven (7) members, is hereby established to exercise the powers and duties specified herein. Planning Commission Members shall:

a. Be appointed by the Box Elder County Commission
b. Be residents of Box Elder County
c. Own real property within Box Elder County

Members of the Planning Commission shall serve without compensation, except for reasonable expenses incurred in performing their duties as members of the Commission. **(Ordinance 352)**

B. Appointment and Terms of Office.

1. Planning Commission members shall be appointed by the County Commission.
   a. The terms of Planning Commission members shall be staggered. Each member of the Planning Commission shall serve for a term of three (3) years and until a successor is appointed, provided that members may be appointed for terms shorter than three (3) years when necessary to provide staggered terms.
   b. Planning Commission members may be reappointed for successive terms.
   c. The County Commission may remove any member of the Planning Commission at any time with or without cause.
   d. A vacancy occurring on the Planning Commission by reason of death, resignation, removal, disqualification or any other reason shall be promptly filled by a replacement appointed in the same manner as the original

appointment for the remainder of the unexpired term of the replaced member.

2. Members of the Planning Commission shall be deemed "volunteers" for purposes of County ordinances, rules, regulations and policies concerning personnel; provided, however, they shall be included in the definition of "employee" for purposes of the Utah Governmental Immunity Act, *Utah Code Ann. § 63-30a-101, et seq.*, as amended.

C. Organization and Procedure. The Planning Commission shall be organized and exercise its powers and duties as follows:

1. Members of the Planning Commission shall select one (1) of its members as chair to oversee the proceedings and activities of the Planning Commission.
   a. The chairperson shall serve for a term of one (1) year.
   b. Members of the Planning Commission shall select one (1) of its members as vice-chair to act in the absence of the chair. The chair and vice-chair may be re-elected for successive terms.

2. The Planning Commission may adopt policies and procedures, consistent with the provisions of this Code and applicable law, to govern the conduct of its meetings, the processing of applications, and for any other purposes considered necessary for the functioning of the Planning Commission. All such policies and procedures shall be submitted to the County Commission for review and approval.

3. The Planning Commission shall meet on a regular day(s) each month, as determined by the Planning Commission, and at such other times as the Planning Commission may determine. All meetings shall be properly noticed and held in accordance with the Open Meetings Law set forth in *Utah Code Ann. § 52-4-1, et seq.*, as amended.

4. No official business shall be conducted by the Planning Commission unless a quorum of its members is present. Four (4) members of the Planning Commission shall constitute a quorum. The minimum number of yes votes required for the Planning Commission to take any action shall be the majority of members present, unless otherwise prescribed by law.

5. Decisions of the Planning Commission shall take effect on the date of the meeting or hearing where the decision is made, unless a different date is designated in the Commission's rules, or at the time the decision is made.

6. The Planning Commission shall keep written minutes and a recording shall be kept of all open meetings. Such minutes and recording shall include: the date, time, and place of the meeting; the names of members present and absent; the substance of all matters proposed, discussed, or decided; a record, by individual member, of votes taken; the name of each person who provided testimony and the substance in brief of their testimony; and any other information that any member requests be entered into the minutes or recording.
   a. The Planning Commission shall transmit reports of its official acts and recommendations to the County Commission. Any member of the Commission also may make a concurring or dissenting report or recommendation to the County Commission.
   b. The minutes of all meetings of the Planning Commission shall be prepared and filed in the office of the County Recorder. All such records shall be available for public review and access in accordance with the Government Records and Access Management Act, *Utah Code Ann., §63-2-101, et seq.*, as amended.

D. Powers and Duties. The Planning Commission shall have all the powers and duties, explicit or implied, given planning commissions by Utah State law (Each of such powers and duties shall be exercised pursuant to the procedural and other provisions of this Code). With respect to unincorporated area of the county, the Planning Commission powers and duties are:

1. Prepare and recommend a general plan and amendments to the general plan as provided in Section 2-2-070 of this Code;
2. Prepare and recommend land use ordinances, zoning maps, official maps, and amendments as provided in Section 2-2-080 of this Code;
3. Prepare and recommend subdivision regulations
4. Administer applicable chapters of this Code;
5. Hear and act on a land use applications
6. Establish application processes that:
   a. 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
   b. shall protect the right of each:
      1) applicant and third party to require formal consideration of any application by the Planning Commission,
      2) applicant, adversely affected party, or county officer or employee to appeal a land use authority's decision to a separate appeal authority, and
      3) participant to be heard in each public hearing on a contested application.

7. Recommend approval or denial of subdivision;
8. Hear and decide the approval or denial of conditional use permits, as provided in Section 2-2-100 of this Code;
9. Hear and decide any other matter that the County Commission designates;
10. Exercise any other powers that are necessary to enable the Planning Commission to perform its function or that are delegated to it by the County Commission.

E. Examinations and Surveys. The Planning Commission and its authorized agents may enter upon any land at reasonable times to make examinations and surveys as necessary to enable it to perform its function to promote County planning and development.

F. Appeal. Any person adversely affected by a final decision of the Planning Commission made in the exercise of the provisions of this Code may appeal that decision to the Board of Adjustment.

2-1-060. Board of Adjustment.

A. Established. In order to provide for just and fair treatment in the administration of this Code, and to ensure that substantial justice is done, a Board of Adjustment, consisting of five (5) members, is hereby established to exercise the powers and duties specified herein. Members of the Board of Adjustment shall serve without compensation, except for reasonable expenses incurred in performing their duties as Board members of the Board.

B. Appointment and Terms of Office.

1. Board of Adjustment members shall be appointed by the County Commission.
   a. The terms of Board of Adjustment members shall be staggered. Each member of the Board of Adjustment shall serve for a term of five (5) years and until a successor is appointed, provided that members may be appointed for terms shorter than five (5) years when necessary to provide staggered terms.
   b. Board of Adjustment members may be reappointed for successive terms.
   c. The County Commission may remove any member of the Board of Adjustment for cause if written charges are filed against the member with the County Commission, provided, that the member shall be afforded a public hearing if one is requested by the member.
   d. A vacancy occurring on the Board of Adjustment by reason of death, resignation, removal, disqualification or any other reason shall be promptly filled by a replacement appointed in the same manner as the original

appointment for the remainder of the unexpired term of the replaced member.

2. In addition to the five (5) members of the Board of Adjustment the County Commission may appoint two (2) alternate Board of Adjustment members. The term, reappointment, removal, and vacancy of alternate Board of Adjustment members shall be the same as for regular Board of Adjustment members. Alternate members of the Board of Adjustment may serve on the Board of Adjustment in the absence of a regular Board of Adjustment member. The County Commission shall make rules establishing a procedure for alternate members to serve in the absence of members of the Board of Adjustment.

3. Members and alternate members of the Board of Adjustment shall be deemed "volunteers" for purposes of County Ordinances, rules, regulations and policies concerning personnel; provided, however, they shall be included in the definition of "employee" for purposes of the Utah Governmental Immunity Act as set forth in *Utah Code Ann. § 63-30-1, et seq*., as amended.

E. Organization and Procedure. The Board of Adjustment shall be organized and exercise its powers and duties as follows.

1. Members of the Board of Adjustment shall select one (1) of its members as chair to oversee the proceedings and activities of the Board of Adjustment.
   a. The chair shall serve for a term of one (1) year.
   b. Members of the Board of Adjustment shall select one (1) of its members as vice-chair to act in the absence of the chair. The chair and vice-chair may be re-elected for successive terms. The chair and vice-chair may be re-elected for successive terms. The chair, or in the absence of the chair, the vice-chair, may administer oaths and compel the attendance of witnesses.
2. The Board of Adjustment may adopt policies and procedures, consistent with the provisions of this Code and applicable law, to govern the conduct of its meetings, the processing of applications, and for any other purposes considered necessary for the functioning of the Board of Adjustment. All such policies and procedures shall be submitted to the County Commission for review and approval.
3. The Board of Adjustment shall meet as necessary to consider matters within its jurisdiction. All meetings shall be properly noticed and held in accordance with the Open Meetings Law set forth in *Utah Code Ann. § 52-4-1, et seq*., as amended.
4. No official business shall be conducted by the Board of Adjustment unless a quorum of its members is present. Three (3) members of the Board shall

constitute a quorum. The majority of Board of Adjustment members present is necessary to reverse any order, requirement, decision or determination of any administrative official or agency or to decide in favor of an appellant.

5. Decisions of the Board of Adjustment shall take effect on the date of the meeting or hearing where the decision is made, unless a different time is designated in the Board's rules, or at the time the decision is made.
6. The Board of Adjustment shall keep written minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote, indicating that fact, and keep records of its examinations and other official actions. The Board of Adjustment may, but is not required to, have its proceedings contemporaneously transcribed or use a tape recorder.
    a. The Board of Adjustment shall transmit reports of its official acts and recommendations to the County Commission.
    b. The minutes of all meetings of the Board of Adjustment shall be prepared and filed in the office of the County Recorder. All such records shall be available for public review and access in accordance with the Government Records and Access Management Act, *Utah Code Ann., § 63-2-101, et seq.,* as amended.

D. Powers and Duties. The Board of Adjustment shall have all the powers and duties, explicit or implied, given such boards 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 Code.

1. Hear and decide appeals from zoning decisions applying the provisions of this Code, as provided in this Code, and in accordance with Section 2-2-180 of this Code;
2. Hear and decide appeals from Planning Commission decisions regarding conditional use permits, as provided in Section 2-2-100 of this Code;
3. Hear and decide appeals from Planning Commission decisions regarding site plans, as provided in Section 2-2-110;
4. Hear and decide variances from the terms of this Code, as provided in Section 2-2-130 of this Code;
5. Hear and decide appeals regarding the existence, expansion, or modification of nonconformities, as provided in Section 2-2-180 of this Code; and

E. Appeal. An appeal to the Board of Adjustment shall be made as provided in Section 2-2-180 of this Code.

F. **Notice of Hearing.** The Board of Adjustment shall fix a reasonable time for the hearing of each appeal, give public notice thereof and due notice to the parties in interest as provided in Section 2-180 of this Code.

G. **Appearance.** At the hearing of any matter, the parties affected may appear in person with or without an attorney.

H. **Stay of Proceedings.** An appeal to the Board of Adjustment shall stay all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the Board that by reason of facts stated in the appeal, a stay would, in his or her opinion, cause immediate peril to life or property. In such case, proceedings shall not be stayed except by a restraining order granted by the Board of Adjustment or by the District Court upon application, notice, and due cause shown.

I. **Appeal.** Any person adversely affected by a final decision of the Board of Adjustment may petition the district court for a review of the decision as provided in *Utah Code Ann. §§ 17-27a-801* as amended.

2-1-070. Planning Commission Referral.

A. **Referral to Staff.** The Planning Commission may direct that any matter over which it has jurisdiction be referred to the staff of the Planning Commission for review and preparation of recommendations. Such action shall be taken either by motion of the Planning Commission or pursuant to duly adopted policies and procedures of the Planning Commission. The authority for such referrals may be revoked at any time by motion of the Planning Commission or amendment of its policies and procedures as the case may be.

B. **Review and Recommendation.** If a matter is referred to the Planning Commission staff as permitted by this section, the staff shall conform to any instructions or limitations contained in the referral, and subject thereto shall review the referred matter, conduct any necessary hearings, and prepare written recommendations for the Planning Commission.

C. **Decision.** Unless the Planning Commission shall otherwise direct, any person who has applied for authorization to develop property under the terms of this Code may in writing consent to the staff recommendation and waive further action by the Planning Commission. If the applicant waives further action by the Planning Commission, the staff recommendation shall be considered approved by the Planning Commission. Thereafter, necessary permits may be issued subject to the terms of this Code and any applicable conditions of approval.

D. **Limitation**. This section shall not apply to any action where the Planning Commission is required by law to take direct action.

2-1-080. Zoning Administrator.

A. **Appointment.** The Planning Staff is hereby designated as the Zoning Administrator who shall be primarily responsible for administering and enforcing this Code.

B. **Interpretation.** When necessary, the Zoning Administrator shall interpret the provisions of this Code, subject to general and specific policies established by the Planning Commission and County Commission. Upon request, the Zoning Administrator shall make a written interpretation of the text of this Code pursuant to Section 2-2-170 of this Code. Any person wishing to appeal the interpretation of the Code made by the Zoning Administrator may proceed to the Planning Commission.

C. **Administrative Duties**. The Zoning Administrator shall accomplish or cause to be accomplished all administrative actions required by this Code, including the giving of notice, holding of hearings, preparation of staff reports, and receiving and processing of appeals.

D. **Appeal**. Any person adversely affected by a final decision of the Zoning Administrator made in the exercise of the provisions of this Code may appeal that decision to the Board of Adjustment as provided in Section 2-2-180 of this Code.