

## TITLE 25. SUBDIVISIONS <sup>1</sup>

### Sections:

- 25.01 General Provisions.
  - 25.01.01 Short Title.
  - 25.01.02 Purposes.
  - 25.01.03 Final Plat Required Before Lots May be Sold.
  - 25.01.04 Enactment.
  - 25.01.06 Subdivision Defined.
  - 25.01.07 Subdivision Not to Include.
  - 25.01.08 Fees and Charges.
  - 25.01.10 Enforcement.
  - 25.01.11 Licenses and Permits.
  - 25.01.12 Penalties.
  - 25.01.13 When an Applicant is Entitled to Approval of an Application – Exceptions – City May Not Impose Unexpressed Requirements – City Required to Comply with the Requirements of this Ordinance.
  - 25.01.14 City Imposed Requirements and Exactions on Application Approval.
  - 25.01.15 Restrictions for Solar and other Energy Devices.
  - 25.01.16 Validity.
- 25.02 Sketch Plan.
  - 25.02.01 Sketch Plan Meeting – Purposes.
  - 25.02.02 Sketch Plan Application – Requirements.
  - 25.02.03 Sketch Plan Meeting – Items.
  - 25.02.04 Actions following a Sketch Plan Meeting
  - 25.02.05 Sketch Plan – Not an Application for Subdivision Approval.
- 25.03 Preliminary Subdivision Applications
  - 25.03.01 Intent and Purpose.
  - 25.03.02 Preliminary Subdivision Application – Council and City Planner identified as Land Use Authorities – Commission Recommendation Required.
  - 25.03.03 Preliminary Subdivision Applications for Nine (9) or Fewer Lots – City Planner Authorized to Consider and Decide One (1) Preliminary Subdivision Application Only
  - 25.03.04 Preliminary Subdivision Applications – Application Requirements.
  - 25.03.05 Preliminary Subdivision Application – Engineering Review Fees.
  - 25.03.06 City Planner to Determine a Complete Preliminary Subdivision Application.
  - 25.03.07 Determination of an Incomplete Preliminary Subdivision Application.
  - 25.03.08 Appeal of a Determination of Application Completeness Decision by the City Planner.
  - 25.03.09 Preliminary Subdivision Application Review Procedures.
  - 25.03.10 Restrictions for Solar and other Energy Devices.
  - 25.03.11 Effect of Approval, with or without requirements, of a Preliminary Subdivision Application and Effective Period.
  - 25.03.12 Site Preparation Work Prohibited.
  - 25.03.13 Appeal of Preliminary Subdivision Application Decisions.
- 25.04 Final Subdivision Applications.
  - 25.04.01 Intent and Purpose.
  - 25.04.02 Final Subdivision Application – Council and City Planner Identified as Land Use Authorities – City Staff Recommendation Required.
  - 25.04.03 Final Subdivision Applications for Nine (9) or Fewer Lots – City Planner Authorized to Consider and Decide One (1) Final Subdivision Application Only.
  - 25.04.04 Final Subdivision Applications – Preliminary Subdivision Approval Required Application.
  - 25.04.05 Final Subdivision Applications – Application Requirements
  - 25.04.06 Final Subdivision Application Engineering Review Fees
  - 25.04.07 City Planner to Determine a Complete Final Subdivision Application.
  - 25.04.08 Determination of an Incomplete Final Subdivision Application.
  - 25.04.09 Appeal of a Determination of Application Completeness Decision by the City Planner.

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<sup>1</sup> Title completely rewritten with Ordinance No. 07-16, dated 7/19/07.

- 25.04.10 Final Subdivision Application Review Procedures.
- 25.04.11 Restrictions for Solar and other Energy Devices.
- 25.04.12 Effect of Approval, with or without requirements, of a Final Subdivision Application and Effective Period.
- 25.04.13 Dedication of Streets and other Public Places.
- 25.04.14 Common Area Parcels on a Final Subdivision Plat – No Separate Ownership – Ownership Interest Equally Divided among other Parcels on the Final Subdivision Plat and Included in Description of other Parcels.
- 25.04.15 Site Preparation Work Prohibited.
- 25.04.16 Appeal of Final Subdivision Application Decisions.
- 25.05 Vacating or Amending a Recorded Final Subdivision Plat, Street or Alley Final.
- 25.05.01 Amendment to a Recorded Final Subdivision Plat.
- 25.05.02 Vacating or Altering a Street or Alley.
- 25.06 Reserved.
- 25.07 Subdivision Ordinance Amendments.
- 25.07.01 Intent and Purpose.
- 25.07.02 Subdivision Ordinance Amendment Application – Council identified as the Land Use Authority – Commission Recommendation Required.
- 25.07.03 Subdivision Ordinance Amendment Applications – Application Requirements.
- 25.07.04 Subdivision Ordinance Amendment Application – Engineering Review Fees.
- 25.07.05 City Planner to Determine a Complete Subdivision Ordinance Amendment Application.
- 25.07.06 Determination of an Incomplete Subdivision Ordinance Amendment Application.
- 25.07.07 Appeal of a Determination of Application Completeness Decision by the City Planner.
- 25.07.08 Subdivision Ordinance Amendment Application Review Procedures.
- 25.07.09 Effect of Approval, with or without requirements, of a Subdivision Ordinance Amendment Application – Adopting Ordinance Required.
- 25.07.10 Appeal of Subdivision Ordinance Amendment Application Decisions.
- 25.08 Noticing Requirements.
- 25.08.01 Purpose.
- 25.08.02 Notice Required for Public Hearings and Public Meetings to consider the Adoption or any Modifications of this Ordinance and Notice of Final Action.
- 25.08.03 Notice Required for Public Hearings and Public Meetings to consider a Preliminary Subdivision Application and Notice of Final Action.
- 25.08.04 Notice Required by the Act for Public Meetings to consider a Final Subdivision Application and Notice of Final Action.
- 25.08.05 Notice Required for Public Hearings and Public Meetings to consider an Amendment to a Final Subdivision Plat and Notice of Final Action.
- 25.08.06 Notice Required for Public Hearings and Public Meetings to consider an Application to Vacate, Alter, or Amend a Public Street or Right-of-Way.
- 25.08.07 Notice Challenge.
- 25.09 Appeals.
- 25.09.01 Purpose.
- 25.09.02 Appeal Authorities.
- 25.09.03 Maximum Time Allowed to File Appeal.
- 25.09.04 Requirements for an Appeal Petition.
- 25.09.05 Condition Precedent to Judicial Review, Appeal Authority Duties.
- 25.09.06 Application Required.
- 25.09.07 Meetings, Records, and Action of an Appeal Authority.
- 25.09.08 Due Process.
- 25.09.09 Burden of Proof.
- 25.09.10 Standard of Review for Appeals.
- 25.09.11 Final Decision.
- 25.09.12 District Court Review.
- 25.10 Special Exceptions.
- 25.10.01 Intent and Purpose.
- 25.10.02 Special Exception Application – Council identified as Land Use Authority – Commission Recommendation Required.

- 25.10.03 Allowed Special Exceptions.
- 25.10.04 Special Exception Applications – Application Requirements.
- 25.10.05 Special Exception Application -- Engineering Review Fees.
- 25.10.06 City Planner to Determine a Complete Special Exception Application.
- 25.10.07 Determination of an Incomplete Special Exception Application.
- 25.10.08 Appeal of a Determination of Application Completeness Decision by the City Planner.
- 25.10.09 Special Exception Application Review Procedures.
- 25.10.10 Special Exception Application – Approval Standards – Reasonable Approval Requirements Authorized.
- 25.10.11 Effect of Approval, with or without requirements, of a Special Exception Application and Effective Period.
- 25.10.12 Site Preparation Work Prohibited.
- 25.10.13 Appeal of Special Exception Application Decisions.
- 25.11 Design and Construction Standards.
- 25.11.01 Design and Construction Standards Applicable to all Subdivision Applications.
- 25.11.02 Design and Configuration of Lots and Parcels.
- 25.11.03 Street Design Requirements.
- 25.11.04 Street Naming.
- 25.11.05 Road and Street Curvature and Alignment Requirements.
- 25.11.06 Frontage on Freeways or Major Highways.
- 25.11.07 Minimum Roadbed and Paving.
- 25.11.08 Maximum Cul-De-Sac Length.
- 25.11.09 Maximum Road and Street Grade.
- 25.11.10 Sidewalks, Curbs, and Gutters Required.
- 25.11.11 Traffic Control Devices.
- 25.11.12 Pedestrian Cross-Walks.
- 25.11.13 Lot Size Standards.
- 25.11.14 Easement Standards.
- 25.11.15 All Utilities to Be Underground.
- 25.11.16 Alleys.
- 25.11.17 Required Infrastructure and Services.
- 25.12 Guarantees for Subdivision Improvements, Facilities, and Amenities.
- 25.12.01 Necessary Guarantees.
- 25.13 Definitions.
- 25.01 General Provisions.

**25.01.01 Short Title.**

This Ordinance shall be known and may be cited as the “Brigham City Subdivision Ordinance” and may be identified within this document and other documents as “the Ordinance,” “this Ordinance,” “Subdivision Ordinance,” or “Land Use Ordinance.” This Ordinance shall be considered and may be identified as a Brigham City Land Use Ordinance, as defined by the Act.

**25.01.02 Purposes.**

This Ordinance is established to promote the purposes of Title 10 Chapter 9a Utah Code Annotated, 1953, as amended (hereinafter the “Act”) and to provide for the orderly division of lands, to avoid incompatibilities in land uses, and to secure the provision and long-term maintenance of necessary infrastructure, facilities, and services in an efficient and economical manner for existing and future Brigham City residents.

**25.01.03 Final Plat Required Before Lots May be Sold.**

As provided and authorized by the Act, a Final Subdivision Plat shall be approved, as provided by 25.04 herein, complying with all requirements of this Ordinance, and the Act, before such Final Subdivision Plat may be filed or recorded in the Office of the Box Elder County Recorder, and lots may be sold.

**25.01.04 Enactment.**

The City Council of Brigham City, Utah (hereinafter “Council”) adopts this Ordinance pursuant to the Act and all other authorities and provisions of Utah and Federal statutory laws, and common law, as

applicable.

This Ordinance constitutes a part of Brigham City's Land Use Ordinances, as authorized and identified by the Act.

**25.01.05 Applicability and Authority.**

Upon its adoption by the Council, and effective the 8th day of August 2007, this Ordinance shall govern and apply to the subdivision of all lands lying within the municipal boundaries of Brigham City, Utah (hereinafter "the City")

**25.01.06 Subdivision Defined.**

For the purposes of this Ordinance, and the Act, "Subdivision" shall be, and shall mean:

A. Any land that is divided, resubdivided or proposed to be divided into two (2) or more lots, parcels, sites, units, plots, or other division of land for the purpose, whether immediate or future, for offer, sale, lease, or development either on the installment plan or upon any and all other plans, terms, and conditions.

B. Subdivision includes:

1. the division or development of land whether by deed, metes and bounds description, devise and testacy, map, plat, or other recorded instrument; and

2. all divisions of land for residential and nonresidential uses, including land used or to be used for commercial, agricultural, and industrial purposes, except as provided by Section 25.01.07 herein.

**25.01.07 Subdivision Not to Include.**

As provided by the Act, and for the purposes of this Ordinance, "Subdivision" does not include:

A. a bona fide division or partition of agricultural land for the purpose of joining one (1) of the resulting separate parcels to a contiguous parcel of unsubdivided agricultural land, if neither the resulting combined parcel nor the parcel remaining from the division or partition violates an applicable Land Use Ordinance of the City;

B. a recorded agreement between owners of adjoining unsubdivided properties adjusting their mutual boundary if:

1. no new lot is created; and

2. the adjustment does not violate applicable Land Use Ordinances of the City.

C. A recorded document, executed by the owner of record:

1. revising the legal description of more than one (1) contiguous unsubdivided parcel of property into one legal description encompassing all such parcels of property; or

2. joining a subdivided parcel of property to another parcel of property that has not been subdivided, if the joinder does not violate applicable Land Use Ordinances of the City.

D. A recorded agreement between owners of adjoining subdivided properties adjusting their mutual boundary if:

1. no new dwelling lot or housing unit will result from the adjustment; and

2. the adjustment will not violate any applicable Land Use Ordinance of the City.

E. The joining of a subdivided parcel of property to another parcel of property that has not been subdivided does not constitute a subdivision as to the unsubdivided parcel of property or subject the unsubdivided parcel to this Ordinance.

**25.01.08 Fees and Charges.**

The Council, by Resolution, may establish necessary fees and charges payable for Application processing and review, inspection services, and other services provided by the City, or required by this Ordinance. The Council may amend such fees and charges from time to time, as considered necessary.

**25.01.09 Prohibited Acts.**

A. An owner of any land located in a subdivision who transfers or sells any land in that subdivision before a Final Subdivision Plat has been approved and recorded in the Office of the Box Elder County Recorder, as required and provided by this Ordinance, and the Act, is guilty of a violation of this Ordinance, and the Act, for each lot or parcel transferred or sold.

B. The description by metes and bounds in an instrument of transfer or other documents used in the process of selling or transferring lots does not exempt the transaction from being a violation of this Ordinance, and the Act, or from the penalties or remedies provided by this Ordinance, or the Act.

C. Notwithstanding the provisions of this Section, the recording of an instrument of transfer or other

document used in the process of selling or transferring real property that violates this Ordinance, and the Act:

1. does not affect the validity of the instrument or other document; and
2. does not affect whether the property that is the subject of the instrument or other document complies with the Land Use Ordinances of the City, including this Ordinance, other Land Use Ordinances, including the Brigham City Zoning Ordinance (hereinafter "Zoning Ordinance").

**25.01.10 Enforcement.**

A. The City may take all actions, allowed under the law, to insure compliance and enforcement of this Ordinance. Failure of the City to enforce any provision or seek remedies to any violation of this Ordinance shall not legalize any such violation.

B. The City, or any adversely affected owner of real estate within the City, in which violations of this Ordinance are occurring, or are about to occur may, in addition to other remedies provided by law, institute:

1. injunctions, mandamus, abatement, or any other appropriate actions; or
2. proceedings to prevent, enjoin, abate, or remove the unlawful building, use, or act.

C. As provided by the Act, the City need only establish a violation of this Ordinance to obtain the injunction.

D. The City may bring an action against a property owner to require that the property conform and comply with the provisions of this Ordinance and/or the Act.

E. An action brought by the City against a property owner, and authorized by this Section, and the Act, may include an injunction, abatement, merger of title, or any other appropriate action or proceeding to prevent, enjoin, or abate the violation of this Ordinance.

F. To enforce this Ordinance the City may withhold or deny the approval or issuance of any required Land Use Permit, or Building Permit, as provided by Section 25.01.11 herein.

**25.01.11 Licenses and Permits.**

A. From the effective date of this Ordinance, no approval, including the issuance of any building permit for the construction, alteration, or modification of any building or structure, shall be issued by the City unless such approval complies with the requirements and provisions of this Ordinance, including a determination that the lot or parcel, proposed for the approval or permit is a legal lot created pursuant to the provisions of this Ordinance, or prior enactments of this Ordinance, or is a legal lot of record. Any approval or permit issued in conflict with the provisions and requirements of this Ordinance shall be void and invalid.

B. The City may enforce this Ordinance by withholding building permits.

C. It is unlawful to erect, construct, reconstruct, alter, or change the use of any building or other structure within the City without approval of a building permit, unless such building is exempt, as provided by the Building Code of the City.

D. Except as provided by Section 25.01.13 herein, the City Building Official shall not approve, and shall not issue, a building permit unless the plans for the proposed erection, construction, reconstruction, alteration, or use fully conform to all adopted Land Use Ordinances of the City, including this Ordinance, and the Zoning Ordinance.

E. The City Building Official shall not approve, and issue, a building permit that would be a violation of this Ordinance, or the City's other Land Use Ordinances, including the Zoning Ordinance.

F. No City employee shall approve and issue any permit or license that would be a violation of this Ordinance, or the City's other Land Use Ordinances, including the Zoning Ordinance.

G. Any approval, permit, or license issued in conflict with any standard or requirement of this Ordinance, or the City's other Land Use Ordinances, including the Zoning Ordinance, shall be void and invalid.

**25.01.12 Penalties.**

A. As provided by the Act, a violation of any provision of this Ordinance is punishable as a Class C misdemeanor upon conviction either:

1. As a Class C misdemeanor; or
2. By imposing an appropriate civil penalty adopted under the authority of the Act.

**25.01.13 When an Applicant is Entitled to Approval of an Application – Exceptions – City May Not Impose Unexpressed Requirements – City Required to Comply with the Requirements of this Ordinance.**

A. An Applicant is entitled to the approval of a Land Use Application, required by this Ordinance, if such Application conforms to the requirements of this Ordinance, and the City's other Land Use Ordinances,

Land Use Maps, and Zoning Ordinance, as may be applicable, in effect at the time when the City Planner, or designee, determines the Application to be complete and all fees have been paid, unless:

1. The Land Use Authority, on the record, finds that a compelling, countervailing public interest would be jeopardized by approving the Application; or

2. In the manner provided by local ordinance and before the Land Use Application is submitted, the City has formally initiated proceedings to amend its Land Use Ordinances in a manner that would prohibit approval of the Application as submitted.

B. The City shall process a Land Use Application without regard to proceedings initiated to amend the City's Land Use Ordinances, including this Ordinance and Zoning Ordinance if:

1. One hundred and eighty (180) calendar days have passed since the proceedings were initiated; and

2. The proceedings have not resulted in an enactment that prohibits approval of the Application, as submitted.

C. If the Final Subdivision Plat, as required by Section 25.01.03 and Chapter 25.04 herein conforms fully to the requirements of this Ordinance, and the City's other Land Use Ordinances, including the Zoning Ordinance, and has been approved by the Culinary Water Authority and the Sanitary Sewer Authority, as identified by Section 25.03.04(12) herein, the Final Subdivision Plat shall be approved.

D. The City shall not impose on an Applicant, or any holder of any approval required by this Ordinance, any requirement that is not expressed:

1. In the approval required by this Ordinance, or in documents on which such approval is based; or

2. In this Ordinance, or in the City's other Land Use Ordinances, including the Zoning Ordinance.

E. The City shall not withhold the issuance of a Certificate of Occupancy because of an Applicant's failure to comply with a requirement that is not expressed:

1. In the Building Permit, or in documents on which the Building Permit is based; or

2. In this Ordinance, or the City's other Land Use Ordinances, including the Zoning Ordinance.

F. The City shall be bound by the terms and standards of this Ordinance, and the City's other Land Use Ordinances, including the Zoning Ordinance, as applicable, and shall comply with all mandatory requirements and provisions of such Ordinances.

G. The City shall process and render a decision on each Land Use Application required by this Ordinance with reasonable diligence.

#### **25.01.14 City Imposed Requirements and Exactions on Application Approval.**

The City shall not impose any requirement(s) or exaction(s) on any approval required by this Ordinance unless:

A. An essential link exists between a legitimate governmental interest and each requirement or exaction; and

B. Each requirement or exaction is roughly proportionate, in both nature and extent, to the impact of the proposed subdivision.

#### **25.01.15 Restrictions for Solar and other Energy Devices.**

The Brigham City Planning Commission (hereinafter "Commission") may refuse to recommend, and the Council and City Planner may refuse to approve a Preliminary Subdivision Application and Final Subdivision Application, or the dedication of any street or other ground, if deed restrictions, covenants, or similar binding agreements running with the land for the lots or parcels covered by the Preliminary Subdivision Application or Final Subdivision Application prohibit or have the effect of prohibiting reasonably sited and designed solar collectors, clotheslines, or other energy devices based on renewable resources from being installed on buildings erected on lots or parcels covered by the Preliminary Subdivision Application or Final Subdivision Application.

#### **25.01.16 Validity.**

If any Chapter, Section, Subsection, Paragraph, Sentence, Standard, or Requirement of this Ordinance is held to be invalid, by a Court of competent jurisdiction, such holding shall not affect the validity of any other Chapter, Section, Subsection, Paragraph, Sentence, Standard, or Requirement of this Ordinance.

## **Chapter 25.02 Sketch Plan**

### **25.02.01 Sketch Plan Meeting – Purposes.**

A property owner proposing to subdivide any lands located within the municipal boundaries of the City shall schedule a Sketch Plan Meeting with the City Planner and other representatives of the City and public and private service providers, as determined necessary by the City Planner. The purposes of the Sketch Plan Meeting are to promote an understanding of the City's requirements for subdivisions, including this Ordinance, and to obtain Application processing and review information. The Sketch Plan Meeting shall also be an opportunity for the property owner to receive information on Application procedures and requirements, and to ask questions related to the proposed subdivision (see Figure 1).

### **25.02.02 Sketch Plan Application – Requirements.**

A Sketch Plan Application is required for a Sketch Plan Meeting. The Sketch Plan Application fee should be paid in accordance with Section 25.01.08. The Sketch Plan Application is a discussion document, designed to allow the identification of Application processing and review procedures, requirements and standards, and other items that may be considered in Application review once a complete Preliminary Subdivision Application is received. To achieve these objectives, a Sketch Plan Application shall provide the following information for discussion at the Sketch Plan Meeting:

A. A conceptual layout of the proposed subdivision for the entire area of the subdivision site (hereinafter "Subject Property"), including all subdivision phases, as applicable, and all proposed lots, meeting the minimum development standards, as required by the Zoning District in which the Subject Property is located including lot area, lot frontage, lot width, and yard requirements. The conceptual layout shall also identify the proposed layout of all roads and streets including proposed rights-of-way widths, road and street lengths, and proposed connections to all existing roads and streets and adjoining properties.

B. A minimum of five (5) copies of the proposed subdivision's conceptual layout, in a legible 11 inch x 17 inch size or a size required by the City Planner, shall be filed in the Office of the City Planner.

### **25.02.03 Sketch Plan Meeting – Items.**

At the Sketch Plan Meeting, the City Planner, and other representatives of the City and public and private service providers attending the Sketch Plan Meeting, as determined necessary by the City Planner, may identify the procedures anticipated for Subdivision Application review, Application requirements, review standards, other applicable City, County, State, and Federal requirements, and any other matters (See Figure 1).

### **25.02.04 Actions Following a Sketch Plan Meeting.**

A. Following the Sketch Plan Meeting, a Preliminary Subdivision Application may be filed by the Applicant in the Office of the City Planner.

B. Following the Sketch Plan Meeting, the City Planner shall present Sketch Plan Meeting information to the Commission. At a Commission regular meeting, but as a work session item, information shall be presented to the Commission including the date when the Sketch Plan Meeting was held, the property owner, or owner's authorized agent, the location of the Subject Property, and any other information related to the proposed subdivision. The Commission may identify items the Applicant should consider with a Preliminary Subdivision Application.

### **25.02.05 Sketch Plan – Not an Application for Subdivision Approval.**

A Sketch Plan Application does not constitute a Land Use Application for any approval or permit and is not binding on the City, or the Applicant. No Sketch Plan Meeting discussion should be considered by the Applicant as any indication of a Land Use Application approval or permit, or disapproval, either actual or implied.

## **Chapter 25.03 Preliminary Subdivision Applications**

### **25.03.01 Intent and Purpose.**

It is the intent of this Ordinance that a decision related to a Preliminary Subdivision Application be a discretionary action by the Council for Preliminary Subdivision Applications proposing a total of ten (10) or more lots, acting as the Land Use Authority, and the City Planner for Preliminary Subdivision Applications proposing a total of nine (9) or fewer lots, acting as the Land Use Authority. A decision by the Council or City

Planner, as applicable, related to a Preliminary Subdivision Application shall be accompanied by findings of fact, following the receipt of a Commission recommendation, such recommendation also being accompanied by findings of fact.

For the purposes of this Ordinance, the procedures and requirements for the consideration of a Preliminary Subdivision Application are provided to promote the full consideration of all items related to the proposed subdivision. The Commission shall identify and address all items applicable to a Preliminary Subdivision Application prior to providing a recommendation to the Council or City Planner, as applicable.

The Council or City Planner shall identify and address all items applicable to a Preliminary Subdivision Application prior to approving, approving with requirements, or denying the Preliminary Subdivision Application.

**25.03.02 Preliminary Subdivision Application – Council and City Planner identified as Land Use Authorities – Commission Recommendation Required.**

A. The Council for a Preliminary Subdivision Application proposing a total of ten (10) or more lots, and the City Planner for a Preliminary Subdivision Application proposing a total of nine (9) or fewer lots are hereby identified as the Land Use Authorities for Preliminary Subdivision Applications.

B. Prior to the Council or City Planner considering a Preliminary Subdivision Application, and as required by the Act, the Commission shall conduct a public hearing, complying with the notice requirements of Chapter 25.08 herein. Following the close of the public hearing, the Commission shall transmit a recommendation to the Council or City Planner, as applicable. The review procedures for the consideration of a Preliminary Subdivision Application by the Council are summarized by Figure 2 and the review procedures for the consideration of a Preliminary Subdivision Application by the City Planner are summarized by Figure 3, herein.

**25.03.03 Preliminary Subdivision Applications for Nine (9) or Fewer Lots – City Planner Authorized to Consider and Decide One (1) Preliminary Subdivision Application Only.**

The approval of one (1) Preliminary Subdivision Application proposing a total of nine (9) or fewer lots, by the City Planner, shall prohibit the City Planner from considering any additional Preliminary Subdivision Applications for the Subject Property that exists at the time of Preliminary Subdivision Application approval by the City Planner, as determined by the Property Identification Number for the Subject Property, provided by the Office of the Box Elder County Recorder or Office of the Box Elder County Assessor. The approval of one (1) Preliminary Subdivision Application by the City Planner, shall prohibit the City Planner from reviewing and approving, approving with requirements, or denying any subsequent Preliminary Subdivision Application for the Subject Property. Such Applications are required to provide a Preliminary Subdivision Application for review and decision by the Council, as required for a Preliminary Subdivision Application proposing a total of ten (10) or more lots.

**25.03.04 Preliminary Subdivision Applications – Application Requirements.**

All Preliminary Subdivision Applications, filed in the Office of the City Planner, shall provide the following information, necessary for the City Planner to determine the Application complete, as required by Section 25.03.06 herein:

A. **Application Form.** A Preliminary Subdivision Application Form, completed and signed by the owner(s) of the Subject Property, or authorized agent of the owner(s). If the Application Form is signed by an authorized agent of the owner(s), the Application Form shall be accompanied by an affidavit identifying the agent as being duly authorized to represent the owner(s) in all matters related to the Preliminary Subdivision Application. All persons with a fee interest in the Subject Property shall be required to join in and sign the Preliminary Subdivision Application.

B. **Preliminary Subdivision Application Fees.** The Preliminary Subdivision Application shall include the payment of all Preliminary Subdivision Application fees and Review fees, as established the Council, and any total amount, or deposit amount, required to provide the services of the City Engineer, as provided and required by Section 25.03.05 herein.

C. **Legal Description.** A complete and accurate legal description of the Subject Property.

D. **Preliminary Subdivision Plat.** A Preliminary Subdivision Plat shall be prepared by a licensed land surveyor, as required by the Act,<sup>2</sup> and drawn at a scale of not less than one inch equals one-hundred feet

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<sup>2</sup> See also Section 25.04.05(4).



(1" = 100'), or as recommended by the City Planner or City Engineer. The Preliminary Subdivision Plat shall be prepared in pen and all sheets shall be numbered. A minimum of fifteen (15) 11 inch x 17 inch size and twelve (12) 24 inch x 36 inch size paper copies shall be provided and accompany the Preliminary Subdivision Application Form. A digital copy of the Preliminary Subdivision Plat, in a format acceptable to the City's Geographic Information System, standards shall also be provided. The Preliminary Subdivision Plat shall show the following:

1. A vicinity map, at a minimum scale of one (1) inch = one-thousand (1,000) feet, clearly identifying the boundaries of the entire Subject Property, property accesses, adjoining subdivision outlines and names, as applicable, and relevant features located within one-half (½) mile of the boundary of the Subject Property. The location of the Subject Property with respect to surrounding property and roads and streets, and the names of all adjoining property owners of record shall be shown.

a. The basis of bearings used, graphic and written scale, true north point, township, range, section, quarter section, lot number, and total area of the Subject Property.

b. Proposed road and street layout. All existing and proposed road and street names shall be shown.

c. The boundaries, course, and dimensions of all lots and parcels created, by their boundaries, course, and extent, whether the owner proposes that any lot or parcel is intended to be used as a road or street or for any other public use and whether any such area is reserved or proposed for dedication for a public purpose.

d. The location of any common space or open space areas, including the location of all property proposed to be set aside for public or private reservation, with the designation of the purpose of such set asides, and conditions, if any, of the dedication or reservation.

e. The lot or unit reference, or building reference, road, street or site address, the road and street name or coordinate address, acreage or square footage for all parcels, units, or lots proposed to be created. All parcels, units, or lots created shall be numbered consecutively.

f. All existing and proposed rights-of-way and easement grants of record for underground facilities, as defined by Section 54-8a-2 of the Utah Code Annotated, 1953, as amended, and for all other utility facilities, and all proposed road and street rights-of-way and easement grants of record.

g. Each lot or parcel proposed to be created shall identify the required setback lines identifying the required front, side, and rear yard areas, as required by the Zoning District in which the Subject Property is located.

2. A title block, placed on the right side of the Preliminary Subdivision Plat showing:

a. Proposed Name or Designation of the Subdivision that is distinct from any other Subdivision already recorded in the Office of the Box Elder County Recorder.

b. Name and address of the owner(s) of record and the name, address and license number of the licensed surveyor responsible for preparing the Preliminary Subdivision Plat.

c. Date of preparation of the Preliminary Subdivision Plat, and all revision dates, as applicable.

**E. Required Subject Property Information.** The following information is required and shall be provided on separate sheets at the same scale as the Preliminary Subdivision Plat:

1. The identification of known natural features including, but not limited to, jurisdictional wetlands, as identified by the United States Army Corps of Engineers, areas of slope exceeding five percent (5%) grade, flood plains, flood channels, and drainage way, identified as required by a Local, State, or Federal Agency, with authority, all water courses, areas where ground water is located within three (3) feet of the ground surface, water bodies, marshy or swampy areas, and any other natural features, as required by the City Planner or City Engineer for the Subject Property, including the total area of each.

2. All trees over six (6) inches in diameter, measured four (4) feet above the ground. In cases of heavily wooded areas, indication of the outline of the wooded area and location of trees which are to remain.

3. Existing contours, at intervals of no greater than two (2) feet, overlaid with the proposed subdivision layout. Elevations shall be based on national Geodetic Survey sea level data. In cases of predominately-level topography, one (1) foot interval contours may be required.

4. The location of any known man-made features on, or contiguous to the Subject Property, including existing parcels and lots, all utility easements, railroads, power lines and power poles, telephone and other telecommunication lines and facilities, bridges, culverts, drainage channels, all rights-of-way and easements, field drains, and well or spring protection areas.

5. The location and dimensions of all existing buildings, fence lines and property lines, overlaid

with the proposed subdivision layout.

6. The layout of existing and proposed power lines including the source and connection to the existing or proposed power supply.

7. All existing and proposed road and street locations and dimensions, with cross sections and vertical and horizontal profiles of all new roads and streets proposed to be dedicated to the City, showing the grades of all proposed roads and streets and identifying all proposed cuts and fills exceeding three (3) feet from the existing natural grade. The proposed radius of all centerline curves shall be shown.

The location and size of existing and proposed culinary water and sanitary sewer lines and the location of all wells and springs, if any, and the location of all existing and proposed secondary water locations, as required by the Brigham City Public Works Director and/or City Engineer.

8. Existing and proposed storm drainage and flood control system including existing and proposed pipe sizes, inlets, detention areas, and drainage arrows.

9. The location of all existing and proposed fire hydrants, including the sizes of all existing and proposed water lines serving all fire hydrants.

10. The location of all existing and proposed streetlights identifying the location, type, height, and light output of all existing and proposed streetlights.

11. The location of all existing and proposed street trees and other landscape plantings identifying the location and type of all street trees, shrubs and other landscape materials and plantings.

F. **Geotechnical Report.** A report providing geologic maps, soil type maps, and tables of soil type interpretations based on the National Cooperative Soils Survey, United States Department of Agriculture, Soil Conservation Service. The location and height of all subsurface ground water areas shall be shown.

G. **Preliminary Grading Plan.** For Subject Properties of one (1) acre or larger, a Preliminary Grading Plan shall be provided indicated by solid-line contours, using two (2) foot intervals, imposed on dashed line contours, also using two (2) foot intervals, of the existing topography for the entire Subject Property. For Subject Properties that have predominately level, topography one (1) foot contour intervals may be required by the City Planner and/or City Engineer. The Preliminary Grading Plan shall identify the proposed grading for each proposed lot or parcel to be created.

H. **Preliminary Erosion Control Plan.** When required by the City Planner and/or City Engineer, a Preliminary Erosion Control Plan for the Subject Property shall be provided and included with the Preliminary Subdivision Application. The Preliminary Erosion Control Plan shall identify the proposed drainage and erosion control techniques and methods for each proposed lot or parcel to be created.

I. **Preliminary Easement Plan.** A Preliminary Easement Plan, identifying the location, size, and use of all existing and proposed easements.

J. **Title Report.** A Title Report for the entire Subject Property, provided by a Title Company, within thirty (30) calendar days from the date of filing the Preliminary Subdivision Application in the Office of the City Planner.

K. **Tax Clearance.** A tax clearance from the Box Elder County Treasurer shall be provided as part of the Preliminary Subdivision Application.<sup>3</sup>

L. **Evidence of Availability of Necessary Services.** The following information is required to be presented as part of the Preliminary Subdivision Application, necessary to establish the availability of required services to the Subject Property.

1. Culinary Water Requirements. As required and provided by the Act, the Brigham City Public Works Director (hereinafter "Public Works Director") is hereby designated as the Culinary Water Authority for the City. It shall be the responsibility of the Applicant(s) to provide all information and materials, as required by the Public Works Director, necessary to review the proposed culinary water system and culinary water sources.

2. Sanitary Sewer Requirements. As required and provided by the Act, the Public Works Director is hereby designated as the Sanitary Sewer Authority for the City. It shall be the responsibility of the Applicant(s) to provide all information and materials, as required by the Public Works Director, necessary to review the proposed sanitary sewer system.

3. Subdivision Roads and Streets. The Preliminary Subdivision Application shall identify the proposed road and street layout. Proposed subdivision roads and streets shall make provision for the continuation of existing roads and streets. All subdivision roads and streets shall be designed as required by the Brigham City Corporation Public Works Standards (hereinafter "Public Works Standards"). It shall be the

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<sup>3</sup> See also Section 25.04.05(12).

responsibility of the Applicant(s) to provide all information and materials, as required by the City Engineer, necessary to review the proposed road and street system and road and street designs.

4. Storm Drainage and Flood Control Facilities. The Preliminary Subdivision Application shall identify the storm drainage and flood control system. The proposed subdivision storm drainage and flood control system shall make provision for the continuation of existing storm drainage and flood control facilities. All subdivision storm drainage and flood control system facilities shall be designed as required by the Public Works Standards. It shall be the responsibility of the Applicant(s) to provide all information and materials, as required by the City Engineer, necessary to review the proposed storm drainage and flood control system.

5. Fire Protection, Suppression, and Access Facilities. The Preliminary Subdivision Application shall identify the proposed fire protection, fire suppression, and fire access facilities. Proposed subdivision fire protection, fire suppression, and fire access facilities shall make provision for the continuation of existing facilities. All subdivision fire protection, fire suppression, and fire access facilities shall be designed as required by the Public Works Standards. It shall be the responsibility of the Applicant(s) to provide all information and materials, as required by the City Fire Marshal, necessary to review the proposed fire protection, fire suppression, and fire access facilities.

6. Electrical Power Facilities. The Preliminary Subdivision Application shall identify the proposed electrical power facilities. Proposed subdivision electrical power facilities shall make provision for the continuation of existing facilities. All subdivision electrical power facilities shall be designed as required by the National Electric Safety Code (NESC). It shall be the responsibility of the Applicant(s) to provide all information and materials, as required by the City Power Superintendent, necessary to review the proposed electrical power facilities.

**M Special Service District or Special Service Area.** If the Subject Property is located within the boundaries of a Special Service District or a Special Service Area, a written recommendation from the governing board of such District or Area shall be provided with the Preliminary Subdivision Application materials, which recommendation may identify any potential impacts resulting from the proposed subdivision.

**N. Additional Information and Materials.** When the City Staff, Commission, Council, or City Planner deem necessary, the Applicant may be required to provide other information, materials, letters of feasibility, conduct studies, and provide other evidence indicating the suitability of the Subject Property for the proposed subdivision, including, but not limited to, compliance with the City's Transportation Plan(s) including access management plans, adequacy of infrastructure and utilities, public safety and fire protection, ground water protection, plant cover maintenance, geologic or flood hazard, erosion control, wildlife habitat preservation, and any other infrastructure, physical, environmental, or cultural matters.

#### **25.03.05 Preliminary Subdivision Application – Engineering Review Fees.**

The Applicant(s) for Preliminary Subdivision Application approval shall pay all costs incurred by the City for the provision of City Engineering services, provided by a licensed engineer, selected by the City, and necessary to review the Preliminary Subdivision Application materials for conformity to the requirements of this Ordinance, other applicable Land Use Ordinances and requirements, and accepted civil engineering practice.

#### **25.03.06 City Planner to Determine a Complete Preliminary Subdivision Application.**

A. Within thirty (30) calendar days of the Preliminary Subdivision Application being filed in the Office of the City Planner, and prior to the Preliminary Subdivision Application being scheduled with the Commission (see Figure 2 and Figure 3, as applicable), the City Planner shall determine and find that the Preliminary Subdivision Application is complete and contains all the information and material required for a complete Preliminary Subdivision Application, as required by Section 25.03.04 herein (see Figure 4). As provided for by the Act, the City Planner shall determine a Preliminary Subdivision Application submitted and complete when the Application is provided in a form that complies with all the requirements of Section 25.03.04 herein, and all applicable Preliminary Subdivision Application fees have been paid. The City Planner shall notify the Applicant, in writing, of the result of such determination. Following a Determination of a Complete Preliminary Subdivision Application, the City Planner shall schedule the Preliminary Subdivision Application for a public hearing with the Commission (see Figure 2 and Figure 3, as applicable) such hearing complying with all notice requirements for a public hearing to consider a Preliminary Subdivision Application, as required by Chapter 25.08, herein.

B. A Preliminary Subdivision Application lacking any of the Preliminary Subdivision Application information and materials, as required by Section 25.03.04 herein, shall be cause for the City Planner to determine the Preliminary Subdivision Application, as Incomplete. The requirements of Section 25.03.07 shall apply to all Preliminary Subdivision Applications determined to be Incomplete (see Figure 4).

**25.03.07 Determination of an Incomplete Preliminary Subdivision Application.**

A. A determination of an Incomplete Preliminary Subdivision Application by the City Planner shall prohibit the City Planner from scheduling the required Commission public hearing and shall prohibit the Commission, Council, or City Planner from considering any information or material related to the proposed subdivision (see Figure 4).

B. Following a determination of an Incomplete Preliminary Subdivision Application by the City Planner, the City Planner shall notify the Applicant, in writing, of the information lacking from the Preliminary Subdivision Application. The City Planner shall allow a minimum of thirty (30) calendar days, from the date of notification of an Incomplete Preliminary Subdivision Application, for the Applicant to provide the required information. If the Preliminary Subdivision Application remains incomplete after a minimum of thirty (30) calendar days from date of notification, the City Planner shall return the entire Incomplete Preliminary Subdivision Application to the Applicant(s), including any Preliminary Subdivision Application Review fees paid (see Figure 4).

**25.03.08 Appeal of a Determination of Application Completeness Decision by the City Planner.**

Any person aggrieved by a decision of the City Planner related to a Determination of Application Completeness may appeal the decision to the Commission, the Commission acting as the Appeal Authority for Determinations of Application Completeness decisions.

**25.03.09 Preliminary Subdivision Application Review Procedures.**

A. As provided by Section 25.03.02 the Council is the Land Use Authority for Preliminary Subdivision Applications proposing a total of ten (10) or more lots, and the City Planner is the Land Use Authority for Preliminary Subdivision Applications proposing a total of nine (9) or fewer lots, subject to Section 25.03.03.

B. The review and approval procedure for a Preliminary Subdivision Application proposing ten (10) or more lots is identified in Figure 2 herein.

C. The review and approval procedure for a Preliminary Subdivision Application proposing nine (9) or fewer lots is identified in Figure 3 herein.

D. Staff Review Meeting. Prior to the Commission considering the Preliminary Subdivision Application at a public hearing the City Staff shall review the Preliminary Subdivision Application for compliance to all requirements of this Ordinance and other Land Use Ordinances and requirements, as applicable. The results of the Staff Review Meeting, including all Staff review comments and recommendations shall be provided to the Commission, and Council or City Planner, the Land Use Authority, as applicable.

E. Necessary Approvals and Recommendations. Prior to the Commission considering a Preliminary Subdivision Application at a public hearing the City Planner shall require that the following approvals and recommendations are included with the information and materials provided to the Commission, and Council or City Planner, the Land Use Authority, as applicable:

1. Written approval of the feasibility of the proposed culinary water system and culinary water sources, provided by the Public Works Director.

2. Written approval of the feasibility of the proposed sanitary sewer system, provided by the Public Works Director.

3. A written recommendation of the proposed street and road layout and street and road designs, provided by the City Engineer.

4. If the proposed subdivision will be accessed from a State Highway, an appropriate access permit, as required by the State of Utah Department of Transportation, shall be provided. If the subdivision will be accessed from a County Road, authorization from Box Elder County to allow the subdivision access from a County Road shall be provided.

5. A written recommendation of the proposed storm water management and storm drainage and flood control facilities, provided by the City Engineer.

6. A written recommendation of the proposed fire protection, fire suppression, and fire access facilities, provided by the City Fire Marshal.

7. A written recommendation of the proposed electrical power facilities, provided by the City Power Superintendent.

8. All necessary approvals and/or permits from Federal, State, and Local agencies, as may be applicable.

F. Staff Comments, Necessary Approvals, and Recommendations. All Staff Review Meeting comments, necessary approvals, and recommendations provided to the Commission and Council or City Planner for consideration related to a Preliminary Subdivision Application shall also be provided to the

Applicant(s), a minimum of three (3) business days, before any public hearing or public meeting at which the Preliminary Subdivision Application is considered by the Commission and Council or City Planner, as applicable.<sup>4</sup>

G. Commission Public Hearing Required. Prior to the Commission formulating a recommendation and prior to the Council or City Planner, as applicable, considering a Preliminary Subdivision Application, the Commission shall conduct a public hearing, such hearing complying with all notice requirements for a public hearing to consider a Preliminary Subdivision Application, as required by Chapter 25.08 herein.

H. Commission Recommendation Required. Following the close of the Commission public hearing, the Commission shall consider all information and materials received. The Commission shall formulate and transmit a recommendation to the Council or City Planner, as applicable, on the Preliminary Subdivision Application for consideration.

The Commission may recommend approval of the Preliminary Subdivision Application, as presented, recommend approval of the Preliminary Subdivision Application with requirements, or recommend denial of the Preliminary Subdivision Application, with findings of compliance or non-compliance with this Ordinance, the City's other Land Use Ordinances and all other requirements, as applicable.

The Commission may recommend onsite and offsite improvements, facilities, services, and amenities, provided one hundred percent (100%) by the Applicant(s) for Preliminary Subdivision Application approval, such improvements, facilities, services, and amenities being determined to be consistent with the requirements of Section 25.01.14 herein, including, but not limited to:

1. Road and street improvements, including layout, design, grading and surfacing.
2. Flood control facilities.
3. Culinary Water facilities.
4. Sanitary Sewer facilities.
5. Storm Drainage facilities.
6. Erosion Control facilities.
7. Traffic Circulation and Access Management facilities.
8. Lot, Parcel, and/or Site drainage.
9. Park and open space areas and facilities.
10. Fire protection and suppression facilities, including fire hydrants, fire access, and water storage facilities.
11. Electrical power and telecommunications facilities.
12. Fencing and buffering treatments.
13. Street lighting facilities; and
14. Streetscape enhancements, including street trees and park strip improvements.

J. Council and City Planner Review. Following the receipt of a Commission recommendation, the Council for Preliminary Subdivision Applications proposing a total of ten (10) or more lots, and the City Planner for Preliminary Subdivision Applications proposing a total of nine (9) or fewer lots, shall consider the Preliminary Subdivision Application. The Council shall consider a Preliminary Subdivision Application proposing ten (10) or more lots at a regularly scheduled Council meeting and the City Planner shall consider a Preliminary Subdivision Application proposing nine (9) or fewer lots at a scheduled public meeting.

K. Land Use Authority Action. Following the consideration of the Preliminary Subdivision Application, the recommendation of the Commission, and all information and materials presented, the Council or City Planner, as applicable, acting as the Land Use Authority, may approve the Preliminary Subdivision Application, as presented, approve the Preliminary Subdivision Application with requirements, or deny the Preliminary Subdivision Application with findings of compliance or non-compliance with this Ordinance and other Land Use Ordinances and requirements, as applicable.

The Council or City Planner, as applicable, may require onsite and offsite improvements, facilities, services, and amenities, provided one hundred percent (100%) by the Applicant(s) for Preliminary Subdivision Application approval, such improvements, facilities, services, and amenities being determined consistent with the requirements of Section 25.01.14 herein, including but not limited to:

1. Road and street improvements, including layout, design, grading and surfacing.
2. Flood control facilities.
3. Culinary Water facilities.
4. Sanitary Sewer facilities.
5. Storm Drainage facilities.

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<sup>4</sup> See also Chapter 25.08.

6. Erosion Control facilities.
7. Traffic Circulation and Access Management facilities.
8. Lot, Parcel, and/or Site drainage.
9. Park and open space areas and facilities.
10. Fire protection and suppression facilities, including fire hydrants, fire access, and water storage facilities.
11. Electrical power and telecommunications facilities.
12. Fencing and buffering treatments.
13. Street lighting facilities; and
14. Streetscape enhancements including street trees and park strip improvements.

**25.03.10 Restrictions for Solar and other Energy Devices.**

See Section 25.01.15 herein.

**25.03.11 Effect of Approval, with or without Requirements, of a Preliminary Subdivision Application and Effective Period.**

The approval of a Preliminary Subdivision Application, with or without requirements, by the Council or City Planner, as applicable, shall not constitute a final approval of the subdivision by the City. A Preliminary Subdivision Application approval shall not authorize the division or development of the Subject Property, but allows the Applicant(s) to proceed with the preparation of the Final Subdivision Application for the Subject Property.

As provided by the Act, the continuing validity of a Preliminary Subdivision Application approval is conditioned upon the Applicant(s) proceeding after approval to implement the approval with reasonable diligence. For the purposes of this Ordinance and this Section, the approval of a Preliminary Subdivision Application shall be effective for a period of one (1) year from the date of approval by the Council or City Planner, as applicable, at the end of which time the Applicant(s) shall have submitted a Final Subdivision Application to the Office of the City Planner. If a Final Subdivision Application is not received in the Office of the City Planner within one (1) year of approval, the Preliminary Subdivision Application approval for the Subject Property shall be rendered void and invalid.

**25.03.12 Site Preparation Work Prohibited.**

No excavation, and no grading or regrading, shall take place on any Subject Property, and no building permits shall be issued by the City, until a Final Subdivision Application has been approved and the Final Subdivision Plat has been recorded in the Office of the Box Elder County Recorder, and a Preconstruction Meeting has been held with the City Engineer to identify the requirements for the construction and installation of all required subdivision improvements, facilities, services, and amenities.

**25.03.13 Appeal of Preliminary Subdivision Application Decisions.**

A. Any person aggrieved by a decision of the Council related to a Preliminary Subdivision Application proposing a total of ten (10) or more lots may appeal the decision to District Court, the Court acting as the Appeal Authority for Preliminary Subdivision Application decisions by the Council.

B. Any person aggrieved by a decision of the City Planner related to a Preliminary Subdivision Application proposing a total of nine (9) or fewer lots may appeal the decision to the Council, the Council acting as the Appeal Authority for Preliminary Subdivision Application decisions by the City Planner.

**Chapter 25.04 Final Subdivision Applications.**

**25.04.01 Intent and Purpose.**

It is the intent of this Ordinance that a decision related to a Final Subdivision Application decision be a ministerial action by the Council for Final Subdivision Applications proposing a total of ten (10) or more lots, acting as the Land Use Authority, and the City Planner for Final Subdivision Applications proposing a total of nine (9) or fewer lots, acting as the Land Use Authority. A decision by the Council or City Planner, as applicable, related to a Final Subdivision Application shall be accompanied by findings of fact, following the receipt of a City Staff recommendation.

For the purposes of this Ordinance, the procedures and requirements for the consideration of Final Subdivision Application are provided to promote the full consideration of all items related to the proposed subdivision. The City Staff shall identify and address all items applicable to a Final Subdivision Application

prior to providing a recommendation to the Council or City Planner, as applicable.

The Council or City Planner shall identify and address all items applicable to a Final Subdivision Application prior to approving, approving with requirements, or denying the Final Subdivision Application.

**25.04.02 Final Subdivision Application – Council and City Planner Identified as Land Use Authorities – City Staff Recommendation Required.**

A. The Council for Final Subdivision Applications proposing a total of ten (10) or more lots, and the City Planner for Final Subdivision Applications proposing a total of nine (9) or fewer lots are hereby identified as the Land Use Authorities for Final Subdivision Applications.

B. Prior to the Council or City Planner considering a Final Subdivision Application, the City Staff, City Engineer, and City Attorney shall transmit a recommendation to the Council or City Planner for consideration. The review procedures for the consideration of a Final Subdivision Application by the Council are summarized by Figure 5 and the review procedures for the consideration of a Final Subdivision Application by the City Planner are summarized by Figure 6, herein.

**25.04.03 Final Subdivision Applications for Nine (9) or Fewer Lots – City Planner Authorized to Consider and Decide One (1) Final Subdivision Application Only.**

Approval of one (1) Final Subdivision Application proposing a total of nine (9) or fewer lots, by the City Planner, shall prohibit the City Planner from considering any additional Final Subdivision Applications for the Subject Property that exists at the time of Final Subdivision Application approval by the City Planner, as determined by the Property Identification Number for the Subject Property, provided by the Office of the Box Elder County Recorder or Office of the Box Elder County Assessor, The approval of one (1) Final Subdivision Application by the City Planner, shall prohibit the City Planner from reviewing and approving, approving with requirements, or denying any subsequent Final Subdivision Application for the Subject Property. Such Applications are required to provide a Preliminary and Final Subdivision Application for review and decision by the Council, as required for a Final Subdivision Applications proposing a total of ten (10) or more lots.

**25.04.04 Final Subdivision Applications – Preliminary Subdivision Approval Required Application.**

As a condition precedent to the filing of a Final Subdivision Application in the Office of the City Planner, a Preliminary Subdivision Application for the Subject Property, with or without requirements, shall have been approved by the Council for a Preliminary Subdivision Application proposing a total of ten (10) or more lots, or the City Planner for a Preliminary Subdivision Application proposing a total of nine (9) or fewer lots.

**25.04.05 Final Subdivision Applications – Application Requirements.**

All Final Subdivision Applications, filed in the Office of the City Planner, shall provide the following information to be determined complete by the City Planner, as required by Section 25.04.07:

A. Application Form. A Final Subdivision Application Form, completed and signed by the owner(s) of the Subject Property, or authorized agent of the owner(s). If the Application Form is signed by an authorized agent of the owner(s), the Application Form shall be accompanied by an affidavit identifying the agent as being duly authorized to represent the owner(s) in all matters related to the Final Subdivision Application. All persons with a fee interest in the Subject Property shall be required to join in and sign the Final Subdivision Application.

B. Final Subdivision Application Fees. The Final Subdivision Application shall include the payment of the all Final Subdivision Application fees and Review fees, as established the Council, and any total amount, or deposit amount, required to provide the services of the City Engineer, as provided and required by Section 25.04,06 herein.

C. Legal Description. A complete and accurate legal description for the entire Subject Property.

D. Final Subdivision Plat. A Final Subdivision Plat shall be prepared by a licensed land surveyor, as required by the Act, drawn at a scale of not less than one inch equals one-hundred feet (1" = 100'), or as recommended by the City Planner, and in a form acceptable to the Box Elder County Recorder for recordation. The Final Subdivision Plat shall be prepared in pen on Mylar and all sheets shall be numbered. All required certificates shall appear on a single sheet (along with the index and vicinity maps). One (1) original mylar copy of the Final Subdivision Plat and two (2) original mylar copies of the Final Subdivision Plan profiles shall be included with the Final Subdivision Application and a minimum of twelve (12) 11 inch x 17 inch size and twelve (12) 24 inch x36 inch paper copies shall be provided and accompany the Final Subdivision Application Form. A digital copy of the Final Subdivision Plat, in a format acceptable to the City's Geographic Information System standards shall also be provided. The Final Subdivision Plat shall contain the same information as required

by Section 25.03.04 herein, and shall include any revisions or additions, as required by the Council or City Planner, as part of the Preliminary Subdivision Application approval, as applicable. In addition, the Final Subdivision Plat shall show the following:

1. The notation of any self-imposed restrictions, including proposed restrictive covenants, signed by all owners of interest, and bearing the acknowledgment of a public notary, and all other restrictions as required by the Council or City Planner, as applicable.

2. The accurate survey of the perimeter of the Subject Property and all parcels, units, or lots, created, accurate in scale, dimension and bearing, and giving the location of and ties to the nearest survey monument. Bearings shall be shown to the nearest second; lengths to the nearest hundredth (100<sup>th</sup>) foot; areas to the nearest hundredth (100<sup>th</sup>) acre. All parcels, units, or lots created shall be numbered consecutively. All lands within the boundaries of the Subject Property and the Final Subdivision Plat shall be accounted for as parcels, lots, roads, streets, alleys, walkways, or other designation. The Subject Property shall have an error of closure of not greater than one (1) part in ten thousand (10,000).

3. Endorsements of every person having a security interest in the Subject Property subordinating their liens to all covenants, servitudes, and easements imposed on the property.

4. The location of all monuments erected, corners, and other points established in the field. The material of which the monuments, corners, or other points are made shall be noted as defined in the Public Works Standards.

5. All existing and proposed grid street numbers and street names shall be shown and the street address and coordinate address of all parcels, units, or lots, created shall be shown, as required by the addressing system of the City.

6. All existing and proposed rights-of-way and easement grants of record for underground facilities, as defined by Section 54-8a-2 of the Utah Code Annotated, 1953, as amended, and for all other utility facilities, and all proposed road and street rights-of-way and easement grants of record.

7. The location of any common space or open space areas, including the location of all property proposed to be set aside for public or private reservation, with the designation of the purpose of such set asides, and conditions, if any, of the dedication or reservation.

8. The name and address of the surveyor responsible for preparing the Final Subdivision Plat. The surveyor making the Final Plat shall certify that the surveyor:

- a. holds a license in accordance with Title 58, Chapter 22, Professional Engineers and Professional Land Surveyors Licensing Act;
- b. has completed a survey of the property described on the Final Plat in accordance with Section 17-23-17 of the Utah Code Annotated, 1953, as amended, and has verified all measurements; and
- c. has placed monuments as represented on the Final Subdivision Plat.

9. Located at the top-center and right-hand side of the Final Subdivision Plat, the name of the subdivision, as approved by the Box Elder County Recorder's Office. The basis of bearings used, graphic and written scale, true north point, township, range, section, quarter section, block, and lot number, and total area of the Subject Property shall be shown.

10. A title block showing:

- a. date of preparation of the Final Subdivision Plat;
- b. signature blocks for the dated signatures of the Chair of the City Council or City Planner, as applicable, Commission Chair, City Engineer, and City Attorney.

E. All documents establishing any required agreements, guarantees, or any bonds and the payment of any required guarantees or bonds.

F. Dedications and Grants of Easements. When the Applicant(s) is proposing, or is required, to provide dedications for any infrastructure, utilities, improvements, or services, the owner or operator of the infrastructure, utilities, improvements, or services shall approve the: (i) boundary, course, dimensions, and intended use of the right-of-way and easement grants of record; (ii) location of existing underground and utility facilities; and (iii) conditions or restrictions governing the location of the facilities within the right-of-way, and easement grants of records, and utility facilities within the subdivision. Such approval shall be provided in writing with the Final Subdivision Application.

G. Purchase Agreements. When any parcel, unit, or lot is proposed to be purchased by a public or quasi-public agency, a letter of intention to purchase shall be provided with the Final Subdivision Application.

H. Owner's Dedications. The owner's certificate of dedication(s) including a legal description of the Subject Property boundaries and the dedication of all public ways or spaces. This certificate shall be signed, dated, and notarized. The owner's certificate shall include a reference to any covenants that may be declared and blanks where the Box Elder County Recorder may enter the book and page number of their recording.



I. Required Local, State, and Federal Permits. When required all necessary approvals, licenses, and permits, as required, shall be provided by such Local State, and Federal departments and agencies and included with the Final Subdivision Application.

J. Covenants and Restrictions. Copies of all protective covenants, conditions and restriction (CC&R's), trust agreements, home owner's association articles and bylaws, and all other required documents, including those required by the Council or City Planner, as applicable, governing the future use of property, infrastructure, utility and service systems, re-subdivision, and other provisions required to maintain the integrity of the subdivision.

K. Final Construction Drawings. Final design and construction drawings for all proposed, or required infrastructure, utilities, improvements, or services prepared by a licensed civil engineer, and in a form and as required by the Public Works Standards and the City Engineer, including, but not limited to, all culinary water facilities, all sanitary sewer facilities, all storm drainage and flood control facilities, bridges and culverts, the profiles and cross sections of all proposed roads and streets, all secondary water facilities, all fire hydrants and fire protection and suppression facilities and systems, all electrical power facilities, all telecommunications facilities, all street lights, all street trees and other landscape plantings identifying the location and type of all street trees, shrubs and other landscape materials and plantings, and all other infrastructure, utilities, improvements, or services.

L. Improvement Construction Costs. Estimated construction costs of all proposed, or required infrastructure, utilities, improvements, or services prepared by a licensed civil engineer, and as required by the Public Works Standards and the City Engineer.

M. Final Grading Plan. For Subject Property of one (1) acre or larger, a final grading plan shall be provided indicated by solid-line contours, using two (2) foot intervals, imposed on dashed line contours, also using two (2) foot intervals, of the existing topography for the entire Subject Property. For Subject Properties that have predominately-level topography one (1) foot contour intervals may be required by the City Planner or City Engineer. The Final Grading Plan shall identify the proposed final grades for each proposed lot or parcel to be created.

N. Final Erosion Control Plan. When required by the City Planner or City Engineer, a final erosion control plan for the Subject Property shall be provided and included with the Final Subdivision Application. The Final Erosion Control Plan shall identify the proposed lot drainage and erosion control techniques and methods for each proposed lot or parcel to be created.

O. Final Easement Plan. A final easement plan, identifying the location, size, and use of all existing and proposed easements.

P. Title Report. If the Final Subdivision Application is filed in the Office of the City Planner after one hundred eighty (180) calendar days from the date the Preliminary Subdivision Application is approved, or if any changes or corrections have been made to the Title of the Subject Property since the Preliminary Subdivision Application was approved, a Title Report for the Subject Property, provided by a Title Company, within thirty (30) calendar days from the date of filing the Final Subdivision Application in the Office of the City Planner.

Q. Tax Clearance. A tax clearance from the Box Elder County Treasurer shall be provided as part of the Final Subdivision Application. The Council or City Planner, as applicable, may withhold an otherwise valid Final Subdivision Application approval until the owner(s) of the Subject Property provides the Council or City Planner, as applicable, with a tax clearance indicating that all taxes, interest, and penalties owing for the Subject Property have been paid. Tax Clearance. A tax clearance from the Box Elder County Treasurer shall be provided as part of the Preliminary Subdivision Application.<sup>5</sup>

#### **25.04.06 Final Subdivision Application Engineering Review Fees.**

The Applicant(s) for Final Subdivision Application approval shall pay all costs incurred by the City for the provision of City Engineering services, provided by a licensed engineer selected by the City, and necessary to review the Final Subdivision Application materials for conformity to the requirements of this Ordinance and other applicable Land Use Ordinances and requirements, and accepted civil engineering practice.

#### **25.04.07 City Planner to Determine a Complete Final Subdivision Application.**

A. Within thirty (30) calendar days of the Final Subdivision Application being filed in the Office of the City Planner, and prior to the Final Subdivision Application being scheduled with the Council or City Planner

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<sup>5</sup> See also Section 25.04.05(12).

(see Figure 5 and Figure 6, as applicable), the City Planner shall determine and find that the Final Subdivision Application is complete and contains all the information and material required for a complete Final Subdivision Application, as required by Section 25.04.05 herein (see Figure 4). As provided for by the Act, the City Planner shall determine a Final Subdivision Application submitted and complete when the Application is provided in a form that complies with all the requirements of Section 25.04.05 herein, and all applicable Final Subdivision Application fees have been paid. The City Planner shall notify the Applicant, in writing, of the result of such determination. Following a Determination of a Complete Final Subdivision Application, the City Planner shall schedule the Final Subdivision Application for review by the City Staff in preparation of consideration by the Council and City Planner (see Figure 5 and Figure 6, as applicable) and complying with all notice requirements of Section 25.08 herein.

B. A Final Subdivision Application lacking any of the Final Subdivision Application information and materials as required by Section 25.04.05 herein, shall be cause for the City Planner to determine the Preliminary Subdivision Application as Incomplete. The requirements of Section 25.04.08 shall apply to all Final Subdivision Applications determined to be Incomplete (see Figure 4).

**25.04.08 Determination of an Incomplete Final Subdivision Application.**

A. A determination of an Incomplete Final Subdivision Application by the City Planner shall prohibit the City Planner from presenting the Final Subdivision Application to the City Staff for review, and shall prohibit the Council or City Planner from considering any information or material related to the proposed subdivision.

B. Following a determination of an Incomplete Final Subdivision Application by the City Planner, the City Planner shall notify the Applicant, in writing, of the information lacking from the Final Subdivision Application. The City Planner shall allow a minimum of thirty (30) calendar days, from the date of notification of an Incomplete Final Subdivision Application, for the Applicant to provide the required information. If the Final Subdivision Application remains incomplete after a minimum of thirty (30) calendar days from date of notification, the City Planner shall return the entire Incomplete Final Subdivision Application to the Applicant(s), including any Final Subdivision Application review fees paid.

**25.04.09 Appeal of a Determination of Application Completeness Decision by the City Planner.**

Any person aggrieved by a decision of the City Planner related to a Determination of Application Completeness may appeal the decision to the Commission.

**25.04.10 Final Subdivision Application Review Procedures.**

A. As provided by Section 25.04.02 the Council is the Land Use Authority for Final Subdivision Applications proposing a total of ten (10) or more lots, and the City Planner is the Land Use Authority for Final Subdivision Applications proposing a total of nine (9) or fewer lots, subject to Section 25.04.03.

B. The review and approval procedures for a Final Subdivision Application proposing ten (10) or more lots are identified in Figure 5 herein.

C. The review and approval procedures for a Final Subdivision Application proposing nine (9) or fewer lots are identified in Figure 6 herein.

D. Staff Review Meeting. Prior to the Council or City Planner, as applicable, considering the Final Subdivision Application, the City Staff shall review the Final Subdivision Application for compliance to all requirements of this Ordinance and other Land Use Ordinances and requirements, as applicable. The results of the Staff Review Meeting, including all review comments and any Staff recommendations shall be provided to the Council or City Planner for consideration

E. City Engineer and City Attorney Recommendation. Prior to the Council or City Planner considering a Final Subdivision Application, the City Engineer, and City Attorney shall review the Final Subdivision Application and shall transmit a recommendation to the Council or City Planner, as applicable, for consideration.

F. Staff Comments, Necessary Approvals, and Recommendations. Any Staff Review meeting comments, necessary approvals, and recommendations provided to the Council or City Planner for consideration related to a Final Subdivision Application, including any comments and recommendations provided by the City Engineer and City Attorney, shall also be provided to the Applicant(s), a minimum of three (3) business days, before the Final Subdivision Application is considered by the Council or City Planner, as applicable.<sup>6</sup>

G. Acknowledgement and Necessary Signatures Required. The owner of the Subject Property shall

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<sup>6</sup> See also Chapter 25.08.

acknowledge the Final Subdivision Plat before the Council or City Planner, as applicable, authorized to take the acknowledgement of conveyances of real estate and shall obtain the signatures of required City Officials.

H. Council and City Planner Review. Following the receipt of all Staff review comments and recommendations, including the recommendations of the City Engineer and City Attorney, the Council for a Final Subdivision Application proposing a total of ten (10) or more lots, and the City Planner for a Final Subdivision Application proposing a total of nine (9) or fewer lots, shall consider the Final Subdivision Application. The Council shall consider a Final Subdivision Application proposing ten (10) or more lots at a regularly scheduled Council meeting and the City Planner shall consider a Final Subdivision Application proposing nine (9) or fewer lots at a scheduled public meeting.<sup>7</sup>

1. Following the consideration of the Final Subdivision Application, the recommendation of the City Staff, City Engineer, and City Attorney, and all information and material presented, the Council or City Planner, as applicable, may approve the Final Subdivision Application, as presented, approve the Final Subdivision Application with requirements, or deny the Final Subdivision Application with findings of compliance or non-compliance with this Ordinance, and other Land Use Ordinances and requirements, as applicable.

2. The Council or City Planner, as applicable, may require onsite and offsite improvements, facilities, services, and amenities, provided one hundred percent (100%) by the Applicant(s) for Final Subdivision Application approval, such improvements, facilities, services, and amenities being determined consistent with the requirements of Section 25.01.14 herein, including but not limited to:

- a. Road and street improvements, including layout, design, grading and surfacing.
- b. Flood control facilities.
- c. Culinary Water facilities.
- d. Sanitary Sewer facilities.
- e. Storm Drainage facilities.
- f. Erosion Control facilities.
- g. Traffic Circulation and Access Management facilities.
- h. Lot, Parcel, and/or Site drainage.
- i. Park and open space areas and facilities.
- j. Fire protection and suppression facilities, including fire hydrants, fire access, and water storage facilities.
- k. Electrical power and telecommunications facilities.
- l. Fencing and buffering treatments.
- m. Street lighting facilities; and
- n. Streetscape enhancements including street trees and park strip improvements.

#### **25.04.11 Restrictions for Solar and other Energy Devices.**

See Section 25.01.15 herein.

#### **25.04.12 Effect of Approval, With or Without requirements, of a Final Subdivision Application and Effective Period.**

A. The approval of a Final Subdivision Application, with or without requirements, by the Council or City Planner, as applicable, shall constitute a final approval of the subdivision by the City.

B. After the approved Final Subdivision Plat has been acknowledged and certified, the owner(s) of the Subject Property shall, within one (1) year of the date of approval of the Final Subdivision Application, record the approved Final Plat in the Office of the Box Elder County Recorder. The Applicant(s) shall pay all fees, including copies, for the recording of the Final Plat and all Final Subdivision documents.

C. The Applicant(s) shall provide one (1) Mylar copy of the recorded Final Plat to the City Planner for inclusion in the files of the City.

D. After the Final Plat has been recorded, the Applicant(s) may apply for necessary permits required for the construction and installation of subdivision improvements and building permits consistent with the approved and recorded Final Plat and the City requirements for such permits.

E. As provided by the Act, the continuing validity of a Final Subdivision Application approval is conditioned upon the Applicant(s) proceeding after approval to implement the approval with reasonable diligence. For the purposes of this Ordinance, and this requirement, the approval of a Final Subdivision Application shall be effective for a period of one (1) year from the date of approval by the Council or City

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<sup>7</sup> See also Chapter 25.08.

Planner, as applicable, at the end of which time the Applicant(s) shall have presented the Final Subdivision Plat for recording in the Office of the Box Elder County Recorder. If the Final Subdivision Plat is not recorded within one (1) year of approval, the Final Subdivision Application shall be rendered void and invalid, unless an extension has been granted by the Council or City Planner, ~~as applicable whichever is applicable.~~

~~°F. An extension of the recording period may be granted one time for a period of six (6) months provided the Final Plat still complies with all applicable ordinances and based on the following considerations:~~

~~1. The Applicant(s) shall submit an application, pay filing fee, and provide a written request for an extension to the Office of the Community Development Manager four (4) weeks prior to a regular scheduled City Council meeting or City Planner meeting, whichever is applicable. The regular scheduled meeting shall be held prior to the date the Final Subdivision Application would be rendered void and invalid.~~

~~2. The request for extension shall specify what conditions have been completed and the reasons for the extension request.~~

~~3. Applicant(s) shall provide an updated title report, engineer's estimate, and financial guarantee agreement.~~

~~4. Under direction of the Community Development Manager, City staff shall review the request, status of the subdivision application, and provide recommendation to the City Council or City Planner, as applicable.~~

~~5. An extension may be granted only if the Council or City Planner, as applicable, can substantiate findings where the Applicant(s) ability to record the Final Plat is delayed due to circumstances beyond the Applicant(s) control.~~

~~6. If any of the fees charged as a requirement of subdivision approval, including but not limited to, inspection fees, engineering fees, as well as the amounts the City uses to estimate the financial guarantee to ensure completion of improvements, have increased, the Council or City Planner, as applicable, shall require that the Applicant(s) pay such increases as a condition of granting the extension.~~

~~7. Applicant(s) shall attend a follow-up preconstruction meeting unless the Community Development Manager determines it unnecessary.~~

~~G. When a Final Subdivision Application is rendered void and invalid, a new Final Subdivision Application may be filed within six (6) months of the date the Final Plat approval is rendered void and invalid for construction of approval by the Council or City Planner, as applicable, provided the Final Plat still complies with all applicable ordinances. The new Final Subdivision application shall include but is not limited to, filing fees, updated title report, engineer's estimate, and financial guarantee agreement. Following the six (6) month period, whether used for extension or re-application, the proposed subdivision, including preliminary plat approval is rendered void and invalid, except for any phases recorded with the Office of the County Recorder.~~

#### **25.04.13 Extension of Subdivision Recording Period.**

*An extension may be granted only if the City Council or City Planner, as applicable, can find that the applicant(s) inability to record the Final Plat is due to circumstances beyond the applicant(s) control, such as significant health issues, economic decline, natural disaster, or action caused by the City or other public agencies resulting in a time delay. An extension of the recording period may be granted one time for a period of six (6) months provided the Final Plat still complies with all applicable ordinances and is based on the following considerations:*

*A. The applicant(s) shall submit a request for extension, pay filing fees, and provide a written request for an extension to the Office of the Community Development Manager four (4) weeks before the application expires.*

*B. The request shall specify what conditions have been completed and the reasons for the extension request.*

*C. The request shall include an updated title report, engineer's estimate and financial guarantee agreement.*

*D. City staff review and recommendation.*

*E. If any fees charged as a requirement for subdivision approval have increased, the applicant shall be required to pay such increases.*

*F. Except for completed phases recorded with the Office of the County Recorder, after the extension period, the proposed subdivision, including preliminary plat approval, shall be declared void and invalid.*

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<sup>8</sup> Ordinance 09-09, dated 07/16/09

**25.04.14 Expiration of Subdivision Application.**

A. *After a Final Subdivision Application has expired, a new Final Subdivision Application may be filed within six (6) months of the date when the application has been rendered void and invalid. Final Plat shall comply with all applicable ordinances.*

B. *The new Final Subdivision Application shall include all filing fees, an updated title report, an engineer's estimate, and financial guarantee agreement.*

C. *Except for any phases recorded with the Office of the County Recorder, upon not filing a new Final Subdivision Application within the six (6) month period, the proposed subdivision, including preliminary plat approval, will be declared void and invalid.*

**25.04.13 Dedication of Streets and Other Public Places.**

A. Final Subdivision Plats, when made, acknowledged, and recorded in the Office of the Box Elder County Recorder, according to the procedures and requirements of this Ordinance, operate as a dedication of all roads, streets and other public places, and vest the fee of those parcels of land with the City for the use of the public for the uses named or intended by those Final Subdivision Plats.

B. The dedication established by this Section does not impose liability upon the City for roads, streets and other public places that are dedicated in this manner but are unimproved.

**25.04.14 Common Area Parcels on a Final Subdivision Plat – No Separate Ownership – Ownership Interest Equally Divided among other Parcels on the Final Subdivision Plat and Included in Description of other Parcels.**

A. A parcel designated as common area on a Final Subdivision Plat and recorded in the Office of the Box Elder County Recorder shall not be separately owned or conveyed independent of the other parcels created by the Final Subdivision Plat.

B. The ownership interest in a common area parcel described in Subsection (1) herein shall:

1. For purposes of assessment, be divided equally among all parcels created by the Final Subdivision Plat, unless a different division of interest for assessment purposes is indicated on the Final Subdivision Plat or an accompanying recorded document; and

2. Be considered to be included in the description of each instrument describing a parcel on the Final Subdivision Plat by its identifying plat number, even if the common area interest is not explicitly stated in the instrument.

**25.04.15 Site Preparation Work Prohibited.**

No installation of improvements shall take place on any Subject Property, and no building permits shall be issued by the City, until a Final Subdivision Application has been approved and the Final Subdivision Plat has been recorded in the Office of the Box Elder County Recorder, and a Preconstruction Meeting has been held with the City Engineer to identify the requirements for the construction and installation of all required subdivision improvements, facilities, services, and amenities.

**25.04.16 Appeal of Final Subdivision Application Decisions.**

A. Any person aggrieved by a decision of the Council for a Final Subdivision Application proposing a total of ten (10) or more lots may appeal the decision to District Court, the Court acting as the Appeal Authority for Final Subdivision Application decisions by the Council.

B. Any person aggrieved by a decision of the City Planner for a Final Subdivision Application proposing a total of nine (9) or fewer lot may appeal the decision to the Council, the Council acting as the Appeal Authority for Final Subdivision Application decisions by the City Planner.

**Chapter 25.05 Vacating or Amending a Recorded Final Subdivision Plat, Street or Alley Final**

**25.05.01 Amendment to a Recorded Final Subdivision Plat.**

The Council may vacate or amend a recorded Final Subdivision Plat or any portion of a recorded Final Subdivision Plat by following and complying with all requirements for vacating or changing a Subdivision Plat, as identified by Sections 10-9a-608 and 10-9a-609, Utah Code Annotated, 1953, as amended.

**25.05.02 Vacating or Altering a Street or Alley.**

The Mayor may vacate or alter a street or alley by following and complying with all requirements for vacating or altering a street or alley, as identified at Section 10-9a-609.5, Utah Code Annotated, 1953, as amended.

### **25.05.03 Appeal of Subdivision Amendment Decisions.**

Any person aggrieved by a decision of the Council concerning a vacation or amendment of a recorded Final Subdivision Plat, or any portion of a recorded Final Subdivision Plat, or the decision of the Mayor concerning the vacation or alteration of a street or alley may appeal such decision to District Court, the Court acting as the Appeal Authority.

### **Chapter 25.06 Reserved**

### **Chapter 25.07 Subdivision Ordinance Amendments**

#### **25.07.01 Intent and Purpose.**

It is the intent of this Ordinance that a decision related to a Subdivision Ordinance Amendment Application be a discretionary action by the Council, acting as the Land Use Authority. A decision by the Council related to a Subdivision Ordinance Amendment Application shall be accompanied by findings of fact, following the receipt of a Commission recommendation, such recommendation also being accompanied by findings of fact.

For the purposes of this Ordinance, the procedures and requirements for the consideration of Subdivision Ordinance Amendment Application are provided to promote the full consideration of all items related to the proposed Subdivision Ordinance Amendment Application. The Commission shall identify and address all items applicable to a Subdivision Ordinance Amendment Application prior to providing a recommendation to the Council.

The Council shall identify and address all items applicable to a Subdivision Ordinance Amendment Application prior to approving, approving with requirements, or denying the Subdivision Ordinance Amendment Application.

#### **25.07.02 Subdivision Ordinance Amendment Application – Council Identified as the Land Use Authority – Commission Recommendation Required.**

A. The Council is hereby identified as the Land Use Authority for Subdivision Ordinance Amendment Applications.

B. Prior to the Council considering a Subdivision Ordinance Amendment Application, and as required by the Act, the Commission shall conduct a public hearing, complying with the notice requirements of Chapter 25.08 herein. Following the close of the public hearing, the Commission shall transmit a recommendation to the Council. The review procedures for the consideration of a Subdivision Ordinance Amendment Application are summarized by Figure 7 herein.

#### **25.07.03 Subdivision Ordinance Amendment Applications – Application Requirements.**

All Subdivision Ordinance Amendment Applications, filed in the Office of the City Planner, shall provide the following information, necessary for the City Planner to determine the Application complete, as required by Section 25.07.05 herein:

A. Application Form. A Subdivision Ordinance Amendment Application Form completed and signed by the Applicant(s) for the proposed Subdivision Ordinance Amendment.

B. Subdivision Ordinance Amendment Application Fees. The Subdivision Ordinance Amendment Application shall include the payment of all Subdivision Ordinance Amendment Application fees and Review fees, as established the Council, and any total amount, or deposit amount, required to provide the services of the City Engineer, as provided and required by Section 25.07.04 herein.

C. The identification of the Chapter and Section Number of the Subdivision Ordinance proposed to be amended.

D. A detailed statement of the objective of the proposed Subdivision Ordinance Amendment, clearly identifying the weakness and deficiencies of the existing Chapter and/or Section proposed to be amended, and citing any Goals and Policies of the City, including those contained within the Brigham City General Plan, that supports the proposed Subdivision Ordinance Amendment.

E. Any other information and materials, considered by the Applicant(s), necessary to support the proposed Subdivision Ordinance Amendment.

#### **25.07.04 Subdivision Ordinance Amendment Application – Engineering Review Fees.**

The Applicant(s) for Subdivision Ordinance Amendment Application approval shall pay all costs incurred by the City for the provision of City Engineering services, provided by a licensed engineer, selected by the City, and necessary to review the Subdivision Ordinance Amendment Application materials, as

necessary, for conformity to the requirements of this Ordinance, other applicable Land Use Ordinances and requirements, and accepted engineering practice.

**25.07.05 City Planner to Determine a Complete Subdivision Ordinance Amendment Application.**

A. Within thirty (30) calendar days of the Subdivision Ordinance Amendment Application being filed in the Office of the City Planner, and prior to the Subdivision Ordinance Amendment Application being scheduled with the Commission (see Figure 7), the City Planner shall determine and find that the Subdivision Ordinance Amendment Application is complete and contains all the Subdivision Ordinance Amendment Application information and material required for a complete Subdivision Ordinance Amendment Application, as required by Section 25.07.03 herein (see Figure 4). As provided for by the Act, the City Planner shall determine a Subdivision Ordinance Amendment Application submitted and complete when the Application is provided in a form that complies with the requirements of Section 25.07.03 herein, and all applicable Subdivision Ordinance Amendment Application fees have been paid. The City Planner shall notify the Applicant, in writing, of the result of such determination. Following a Determination of a Complete Subdivision Ordinance Amendment Application, the City Planner shall schedule the Subdivision Ordinance Amendment Application for public hearing with the Commission (see Figure 7) such hearing complying with all notice requirements for a public hearing to consider a Subdivision Ordinance Amendment Application, as required by Chapter 25.08 herein.

B. A Subdivision Ordinance Amendment Application lacking any of the Subdivision Ordinance Amendment Application information and materials, as required by Section 25.07.03 herein shall be cause for the City Planner to determine the Subdivision Ordinance Amendment Application as Incomplete. The requirements of Section 25.07.06 shall apply to all Subdivision Ordinance Amendment Applications determined to be Incomplete (see Figure 4).

**25.07.06 Determination of an Incomplete Subdivision Ordinance Amendment Application.**

A. A determination of an Incomplete Subdivision Ordinance Amendment Application by the City Planner shall prohibit the City Planner from scheduling the required Commission public hearing and shall prohibit the Commission or Council from considering any information or material related to the proposed Amendment (see Figure 4).

B. Following a determination of an Incomplete Subdivision Ordinance Amendment Application by the City Planner, the City Planner shall notify the Applicant, in writing, of the information lacking from the Subdivision Ordinance Amendment Application. The City Planner shall allow a minimum of thirty (30) calendar days, from the date of notification of an Incomplete Subdivision Ordinance Amendment Application, for the Applicant to provide the required information. If the Subdivision Ordinance Amendment Application remains incomplete after a minimum of thirty (30) calendar days from date of notification, the City Planner shall return the entire Incomplete Subdivision Ordinance Amendment Application to the Applicant(s), including any Subdivision Ordinance Amendment Application Review fees paid.

**25.07.07 Appeal of a Determination of Application Completeness Decision by the City Planner.**

Any person aggrieved by a decision of the City Planner related to a Determination of Application Completeness may appeal the decision to the Commission, the Commission acting as the Appeal Authority for Determinations of Application Completeness decisions.

**25.07.08 Subdivision Ordinance Amendment Application Review Procedures.**

A. As provided by Section 25.07.02 the Council is designated as the Land Use Authority for all Subdivision Ordinance Amendment Applications.

B. The review and approval procedures for a Subdivision Ordinance Amendment Application is summarized in Figure 7 herein.

C. Staff Review Meeting. Prior to the Commission considering the Subdivision Ordinance Amendment Application at a public hearing (see Section 25.07.02) the City Staff shall review the Subdivision Ordinance Amendment Application for compliance to the requirements of this Ordinance and other Land Use Ordinances and requirements, as applicable. The results of the Staff Review Meeting, including all Staff review comments and recommendations shall be provided to the Commission and Council for consideration.

D. Staff Comments and Recommendations. All Staff Review comments and recommendations provided to the Commission and Council for consideration related to the Subdivision Ordinance Amendment Application shall also be provided to the Applicant(s), a minimum of three (3) business days, before the

Subdivision Ordinance Amendment Application is considered by the Commission or Council, as applicable.<sup>9</sup>

E. Commission Public Hearing Required. As required by the Act, and prior to the Council considering the Subdivision Ordinance Amendment Application, the Commission shall conduct a public hearing, such hearing complying with all notice requirements for a public hearing to consider a Subdivision Ordinance Amendment Application, as required by Chapter 25.08 herein.

F. Commission Recommendation Required. Following the close of the Commission public hearing, the Commission shall consider all information and materials received. As required by the Act, the Commission shall formulate and transmit a recommendation to the Council on the Subdivision Ordinance Amendment Application for consideration.

G. The Commission may recommend approval of the Subdivision Ordinance Amendment Application, as presented, recommend approval of the Subdivision Ordinance Amendment Application with requirements, or recommend denial of the Subdivision Ordinance Amendment Application, with findings.

H. Council Public Hearing Required. Prior to the Council considering the Subdivision Ordinance Amendment Application, the Council shall conduct a public hearing, such hearing complying with all notice requirements for a public hearing to consider a Subdivision Ordinance Amendment Application, as required by Chapter 25.08 herein.

I. Council Review. Following the close of the public hearing, the receipt of the Commission recommendation, the Council shall consider the Subdivision Ordinance Amendment Application. The Council shall consider a Subdivision Ordinance Amendment Application at a regularly scheduled Council meeting.

J. Council Decision. The Council may adopt or reject the Subdivision Ordinance Amendment Application as proposed or recommended by the Commission, or after making any revision(s) the Council considers appropriate, approve the Subdivision Ordinance Amendment Application with revisions, or deny the Subdivision Ordinance Amendment Application with findings. A decision by the Council to amend the Subdivision Ordinance shall be by the Council's passage of an Ordinance clearly identifying the Chapter(s) and Section(s) of the Subdivision Ordinance to be amended, the nature of the amendments, and the effective date of such amendments.

#### **25.07.09 Effect of Approval, with or without requirements, of a Subdivision Ordinance Amendment Application – Adopting Ordinance Required.**

A. The passage of an Ordinance by the Council, as required by Section 25.07.08, approving a Subdivision Ordinance Amendment Application, with or without revisions, shall not constitute approval of any Subdivision Application, or any other Land Use Application by the Council. A Subdivision Ordinance Amendment Application approval shall not authorize the division or development of land.

B. Passage of an Ordinance by the Council approving a Subdivision Ordinance Amendment Application, with or without revisions, shall amend the Subdivision Ordinance on the effective date, as provided by the adopting Ordinance.

#### **25.07.10 Appeal of Subdivision Ordinance Amendment Application Decisions.**

Any person aggrieved by a decision of the Council for a Subdivision Ordinance Amendment Application may appeal the decision to District Court, the Court acting as the Appeal Authority for Subdivision Ordinance Amendment Application decisions by the Council.

### **Chapter 25.08 Noticing Requirements**

#### **25.08.01 Purpose.**

As required by the Act, the City shall provide notice of all public hearings and public meetings for adoption or modification of this Ordinance and when a Land Use Application required by this Ordinance is considered by the Commission, Council, or City Planner. The notice requirements for public hearings and public meetings, and required Applicant notice are provided by this Chapter.

#### **25.08.02 Notice required for Public Hearings and Public Meetings to consider the Adoption or any Modifications of this Ordinance and Notice of Final Action.**

A. Public Hearings. The City Planner for public hearings before the Commission, and the City Recorder for public hearings before the Council, shall provide notice of the public hearing to consider the

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<sup>9</sup> See also Chapter 25.08.



adoption or any modification of this Ordinance as follows:

1. Notice of the date, time, and place of each public hearing, at least ten (10) calendar days before the public hearing, which notice shall be:
  - a. Mailed to each "affected entity" as defined herein and by Section 10-9a-103(1) of the Act; and
  - b. Posted in at least three (3) public locations within Brigham City, or posted on the official website of Brigham City; and
  - c. Published in a newspaper of general circulation within Brigham City.
2. Notify each Applicant of the date, time, and place of each public hearing, at least ten (10) calendar days before the public hearing.<sup>10</sup>
3. Provide to each Applicant a copy of each Staff Report regarding the Subdivision Ordinance Amendment Application at least three (3) business days before the public hearing.<sup>11</sup>

B. Public Meetings. The City Planner for public meetings before the Commission, and the City Recorder for public meetings before the Council, shall provide notice of the public meeting to consider the adoption or any modification of this Ordinance as follows:

1. Notice of the date, time, and place of the public meeting, at least twenty-four (24) hours before the meeting, which notice shall be:
  - a. posted in at least three (3) public locations within Brigham City; or posted on the official website of Brigham City.
  2. Notify each Applicant of the date, time, and place of each public meeting at least twenty-four (24) hours before the meeting.<sup>12</sup>
  3. Provide to each Applicant a copy of each Staff Report regarding the Application at least three (3) business days before the meeting.<sup>13</sup>

C. Notice of Final Action. The City Recorder shall notify the Applicant of any final action taken by the Council for any Subdivision Ordinance Amendment Application related to the adoption or any modification of this Ordinance.

### **25.08.03 Notice Required for Public Hearings and Public Meetings to consider a Preliminary Subdivision Application and Notice of Final Action.**

A. Public Hearings. The City Planner for public hearings by the Commission shall provide notice of the public hearing to consider a Preliminary Subdivision Application as follows:

1. Notice of the date, time, and place of each public hearing, at least five (5) calendar days before the public hearing, which notice shall be:
  - a. mailed to each "affected entity" as defined herein and by Section 10-9a-103(1) of the Act; and
  - b. posted in at least three (3) public locations within Brigham City; or posted on the official website of Brigham City; and
  - c. mailed and addressed to the record owner of each land parcel located within three-hundred (300) feet of the boundary of the Subject Property; or
  - d. posting the Subject Property with a sign of sufficient size, durability, and print quality that is reasonably calculated to give notice to passers-by.
2. Notify each Applicant of the date, time, and place of each public hearing, at least three (3) calendar days before the public hearing.<sup>14</sup>
3. Provide to each Applicant a copy of each Staff Report regarding the Preliminary Subdivision Application at least three (3) business days before the public hearing.<sup>15</sup>

B. Public Meetings. The City Planner for public meetings before the Commission and the City Recorder for public meetings before the Council, shall provide notice of the public meeting to consider a

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<sup>10</sup> If the City Planner or City Recorder fails to comply with the requirements of Section 25.08.02(1)(b) or (c) or both, an Applicant may waive the failure so that the Application may stay on the public hearing agenda and be considered as if the requirements had been met.

<sup>11</sup> See Footnote #8.

<sup>12</sup> See Footnote #8.

<sup>13</sup> See Footnote #8.

<sup>14</sup> See Footnote #8.

<sup>15</sup> See Footnote #8.

Preliminary Subdivision Application as follows:

1. Notice of the date, time, and place of the public meeting, at least twenty-four (24) hours before the meeting, which notice shall be:
    - a. posted in at least three (3) public locations within Brigham City; or posted on the official website of Brigham City.
  2. Notify each Applicant of the date, time, and place of each public meeting at least twenty-four (24) hours before the meeting.<sup>16</sup>
  3. Provide to each Applicant a copy of each Staff Report regarding the Preliminary Subdivision Application at least three (3) business days before the meeting.<sup>17</sup>
- C. Notice of Final Action. The City Recorder for Preliminary Subdivision Applications proposing a total of ten (10) or more lots, or the City Planner for Preliminary Subdivision Applications proposing a total of nine (9) lots or less, shall notify the Applicant of any final action taken by the Council or City Planner, as applicable, for a Preliminary Subdivision Application.

**25.08.04 Notice required by the Act for Public Meetings to Consider a Final Subdivision Application and Notice of Final Action.**

A. Public Meetings. The City Planner or public meetings before the City Planner, and the City Recorder for public meetings before the Council, shall provide notice of the public meeting to consider a Final Subdivision Application as follows:

1. Notice of the date, time, and place of the public meeting, at least twenty-four (24) hours before the meeting, which notice shall be:
  - a. posted in at least three (3) public locations within Brigham City; or posted on the official website of Brigham City.
2. Notify each Applicant of the date, time, and place of each public meeting at least twenty-four (24) hours before the meeting.<sup>18</sup>
3. Provide to each Applicant a copy of each Staff Report regarding the Final Subdivision Application at least three (3) business days before the meeting.<sup>19</sup>

B. Notice of Final Action. The City Recorder for a Final Subdivision Application proposing a total of ten (10) or more lots, or the City Planner for a Final Subdivision Application proposing a total of nine (9) lots or less, shall notify the Applicant of any final action taken by the Council or City Planner, as applicable, for a Final Subdivision Application.

**25.08.05 Notice Required for Public Hearings and Public Meetings to Consider an Amendment to a Final Subdivision Plat and Notice of Final Action.**

A. Public Hearings. The City Planner for public hearings by the Commission shall provide notice of the public hearing to consider a Final Subdivision Plat Amendment Application as follows:

1. Notice of the date, time, and place of each public hearing, at least five (5) calendar days before the public hearing, which notice shall be:
  - a. posted in at least three (3) public locations within Brigham City; or posted on the official website of Brigham City; and
  - b. mailed and addressed to the record owner of each land parcel located within three-hundred (300) feet of the boundary of the Subject Property; or
  - c. posting the Subject Property with a sign of sufficient size, durability, and print quality that is reasonably calculated to give notice to passers-by.
2. Notify each Applicant of the date, time, and place of each public hearing, at least three (3) calendar days before the public hearing.<sup>20</sup>
3. Provide to each Applicant a copy of each Staff Report regarding the Final Subdivision Plat Amendment Application at least three (3) business days before the public hearing.<sup>21</sup>

B. Public Meetings. The City Planner for public meetings before the Commission and the City

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<sup>16</sup> See Footnote #8.

<sup>17</sup> See Footnote #8.

<sup>18</sup> See Footnote #8.

<sup>19</sup> See Footnote #8.

<sup>20</sup> See Footnote #8.

<sup>21</sup> See Footnote #8.

Recorder for public meetings before the Council, shall provide notice of the public meeting to consider a Final Subdivision Plat Amendment Application as follows:

1. Notice of the date, time, and place of the public meeting, at least twenty-four (24) hours before the meeting, which notice shall be:
    - a. Posted in at least three (3) public locations within Brigham City; or posted on the official website of Brigham City.
  2. Notify each Applicant of the date, time, and place of each public meeting at least twenty-four (24) hours before the meeting.<sup>22</sup>
  3. Provide to each Applicant a copy of each Staff Report regarding the Final Subdivision Plat Amendment Application at least three (3) business days before the meeting.<sup>23</sup>
- C. Notice of Final Action. The City Recorder shall notify the Applicant of any final action taken by the Council for any Final Subdivision Plat Amendment Application.

**25.08.06 Notice Required for Public Hearings and Public Meetings to Consider an Application to Vacate, Alter, or Amend a Public Street or Right-of-Way.**

A. Public Hearings. The City Recorder, for the public hearing by the Council shall provide notice of the public hearing to consider an Application to Vacate, Alter, or Amend a Public Street or Right-of-Way as follows:

1. Notice of the date, time, and place of each public hearing, at least five (5) calendar days before the public hearing, which notice shall be:
  - a. mailed to each "affected entity" as defined herein and by Section 10-9a-103(1) of the Act; and
  - b. posted in at least three (3) public locations within Brigham City; or posted on the official website of Brigham City; and
  - c. mailed and addressed to the record owner of each land parcel located within three-hundred (300) feet of the boundary of the Subject Property; or
  - d. posting the Subject Property with a sign of sufficient size, durability, and print quality that is reasonably calculated to give notice to passers-by.
2. Publishing notice once a week for four (4) consecutive weeks before the hearing in a newspaper of general circulation in Brigham City.
3. Notify each Applicant of the date, time, and place of each public hearing, at least three (3) calendar days before the public hearing.<sup>24</sup>
4. Provide to each Applicant a copy of each Staff Report regarding the Application to Vacate, Alter, or Amend a Public Street or Right-of-Way at least three (3) business days before the public hearing.<sup>25</sup>

B. Public Meetings. The City Planner for public meetings before the Commission and the City Recorder for public meetings before the Council, shall provide notice of the public meeting to consider an Application to Vacate, Alter, or Amend a Public Street or Right-of-Way as follows:

1. Notice of the date, time, and place of the public meeting, at least twenty-four (24) hours before the meeting, which notice shall be:
    - a. posted in at least three (3) public locations within Brigham City; or posted on the official website of Brigham City.
  2. Notify each Applicant of the date, time, and place of each public meeting at least twenty-four (24) hours before the meeting.<sup>26</sup>
  3. Provide to each Applicant a copy of each Staff Report regarding the Application to Vacate, Alter, or Amend a Public Street or Right-of-Way Plat at least three (3) business days before the meeting.<sup>27</sup>
- C. Notice of Final Action. The City Recorder shall notify the Applicant of any final action taken by the Council for any Application to Vacate, Alter, or Amend a Public Street or Right-of-Way.

**25.08.07 Notice Challenge.**

If notice given under authority of this Chapter, and the authority of the Act, is not challenged, as

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<sup>22</sup> See Footnote #8.

<sup>23</sup> See Footnote #8.

<sup>24</sup> See Footnote #8.

<sup>25</sup> See Footnote #8.

<sup>26</sup> See Footnote #8.

<sup>27</sup> See Footnote #8.

provided by the Act, within thirty (30) calendar days after the hearing(s) or meeting(s), or action, for which notice is given, the notice is considered adequate and proper.

**25.08.08 Courtesy Notice.**

In addition to the public hearing and public meeting notice required by this Chapter, and in the interests of favoring public awareness and participation, the City may also provide courtesy notice, in addition to the mandatory public hearing notice required by this Chapter.

Courtesy notice given under authority of this Section shall not be a basis for a challenge of notice, as provided by the Act.

## **Chapter 25.09 Appeals**

### **25.09.01 Purpose.**

As required by the Act, this Chapter is provided to allow the Applicant(s), a Board, or Officer of the City, or any other person who believes they are adversely affected by a decision of a Land Use Authority to appeal such decision to an Appeal Authority, as identified by this Chapter.

### **25.09.02 Appeal Authorities.**

As required by the Act, and to provide for appeals of decisions of a Land Use Authority administering or interpreting this Ordinance, the following Appeal Authorities, with their respective appeal responsibilities, are hereby identified as follows:

A. Any person aggrieved by a decision of the Council in enacting or administering this Ordinance may file a Petition with District Court, as provided by this Chapter.

B. Any person aggrieved by a decision of the City Planner in administering or interpreting this Ordinance may file an Appeal Application with the Council, except any person aggrieved by a decision of the City Planner related to a Determination of Application Completeness may appeal the decision to the Commission.

### **25.09.03 Maximum Time Allowed to File Appeal.**

A. Any person, including the Applicant(s) for any approval required by this Ordinance, and any board or officer of the City, aggrieved by a decision of a Land Use Authority's decision administering or interpreting this Ordinance may, within ten calendar (10) days of the decision, appeal such decision to the Appeal Authority identified by Section 25.09.02 herein, except as may be further provided for by Subsection (2) and (3) below.

B. Any person, including the Applicant(s) for any approval required by this Ordinance, and any board or officer of the City, aggrieved by a decision of the Council, acting as a Land Use Authority, may file a petition for the review of the Council's decision with the District Court within thirty (30) calendar days after the decision is final, as provided by Section 25.09.11 herein.

C. Any person, including the Applicant(s) for any approval required by this Ordinance, and any board or officer of the City, aggrieved by a decision of an Appeal Authority may file a petition for review of the decision with the District Court within thirty calendar (30) days after the decision is final, as provided by Section 25.09.11 herein.

### **25.09.04 Requirements for an Appeal Petition.**

A. An Appeal Petition of a Land Use Authority's decision made under the authority of this Chapter shall clearly identify the alleged error in any order, requirement, decision, or determination made by the Land Use Authority in the administration or interpretation of this Ordinance.

B. Only those decisions in which a Land Use Authority has applied the requirements of this Ordinance to a particular Application, person, lot, or parcel may be appealed to an Appeal Authority.

### **25.09.05 Condition Precedent to Judicial Review, Appeal Authority Duties.**

A. As required by the Act, and as a condition precedent to judicial review, each adversely affected person shall timely and specifically challenge a Land Use Authority's decision, in accordance with the requirements of this Chapter.

B. An Appeal Authority shall:

1. Act in a quasi-judicial manner; and

2. Serve as the final arbiter of issues involving the interpretation or application of this Ordinance; and

3. May not entertain an Appeal of a matter in which the Appeal Authority, or any participating member thereof, had first acted as the Land Use Authority.

C. As provided by the Act, an adversely affected party shall present every theory of relief to the Appeal Authority that it can raise in District Court.

D. As required by the Act, an Appeal Authority shall not require an adversely affected party to pursue duplicate or successive Appeals before it, or another Appeal Authority, as a condition of the adversely affected party's duty to exhaust administrative remedies.

**25.09.06 Application Required.**

An Appeal Petition or Application for an Appeal, of a Land Use Authority's decision shall be made on the Appeal Application Form, available in the Office of the City Recorder.

**25.09.07 Meetings, Records, and Action of an Appeal Authority.**

- A. Each Appeal Authority as identified by Section 25.09.02 herein shall:
  - 1. notify each of its members of any meeting or hearing;
  - 2. provide to each of its members the same information and access to City resources as any other member;
  - 3. convene only if a quorum of its members is present; and
  - 4. act only upon the vote of a majority of its convened members.
- B. The City Recorder, in consultation with the City Attorney, shall coordinate with the Appeal Authority to schedule the hearing of the Appeal. The City Planner and City Recorder shall coordinate and transmit to the Appeal Authority all information and materials constituting the full and complete record of the matter and the decision of the Land Use Authority.
- C. Following a written decision by the Appeal Authority, as required by Section 25.09.11 herein, the City Recorder shall provide the Applicant a copy of the written decision.
- D. A record of the final decision of the Appeal Authority shall be maintained in the Office of the City Recorder, which shall constitute the official record of the Appeal Authority.

**25.09.08 Due Process.**

- A. Each Appeal Authority shall conduct each appeal as provided herein, and specifically Section 25.09.07 and Section 25.09.10.
- B. Each Appeal Authority shall respect the due process rights of each of the participants.

**25.09.09 Burden of Proof.**

Any person bringing an Appeal and alleging an error of a Land Use Authority's decision administering or interpreting this Ordinance has the burden of proof that the Land Use Authority erred.

**25.09.10 Standard of Review for Appeals.**

- A. Each Appeal Authority identified by this Chapter shall hear and review all Appeal Application matters "on the record," including the review of all factual matters. Each Appeal Authority shall only consider that information and material presented and originally before the Land Use Authority in making the decision that is the subject of the Appeal.
- B. The Appeal Authority shall determine the correctness of a decision of the Land Use Authority in its interpretation and application of the Land Use Ordinances.
- C. Only those decisions in which a Land Use Authority has applied the requirements of this Ordinance to a particular Application, person, lot, or parcel may be appealed to an Appeal Authority.
- D. An Appeal Petition shall not be used to waive, modify, or amend any requirement, provision, or term of this Ordinance.

**25.09.11 Final Decision.**

A. A decision of an Appeal Authority shall take effect on the date when the Appeal Authority, as applicable, issues a written decision, which shall constitute a final decision by the City in the matter.

**25.09.12 District Court Review.**

- A. Required Time for Filing.
  - 1. No person may challenge in District Court a decision of a Land Use Authority until that person has exhausted all administrative remedies as provided by this Chapter and received a final decision from the Appeal Authority, as provided by Section 25.09.11 herein.
  - 2. Any person adversely affected by a final decision made in the exercise of, or in violation of, the provisions of this Ordinance may file a petition for review of the decision with the District Court within thirty (30) calendar days after the decision is final.
  - 3. A petition is barred unless it is filed within thirty (30) calendar days after the Appeal Authority's decision is final.
- B. Tolling of Time.
  - 1. The required time for filing for District Court review shall be tolled from the date the a person files a request for arbitration of a constitutional taking issue with the property rights ombudsman,

as provided by §63-34-13, Utah Code Annotated, 1953, as amended, until thirty (30) calendar days after:

- a. The arbitrator issues a final award; or
- b. the property rights ombudsman issues a written statement under §63-34-13(4)(b), Utah Code Annotated, 1953, as amended, declining to arbitrate or to appoint an arbitrator.

2. A tolling under this Section operates only as to the specific constitutional taking issue that is the subject of the request for arbitration filed with the property rights ombudsman by a property owner.

3. A request for arbitration filed with the property rights ombudsman after the time allowed under Subsection (2)(a) to file a petition has expired does not affect the time to file a petition.

C. Standards Governing Court Review.

1. The District Court shall:

- a. presume that a decision, ordinance, or regulation made under the authority of the Land Use Ordinance, and the Act, is valid; and
- b. determine only whether or not the decision, ordinance, or regulation is arbitrary, capricious, or illegal.

2. A decision, ordinance, or regulation of the Council involving the exercise of legislative discretion is valid if the decision, ordinance, or regulation is reasonably debatable and not illegal.

3. A decision of a Land Use Authority, or an Appeal Authority, involving the exercise of administrative discretion is valid if the decision is supported by substantial evidence in the record and is not arbitrary, capricious, or illegal.

4. A determination of illegality requires a determination that the decision, ordinance, or regulation violates a law, statute, or ordinance in effect at the time the decision was made or the ordinance or regulation adopted.

5. The time requirements for the filing of a petition with District Court, as provided by this Chapter, apply from the date on which the Land Use Authority takes action on an Application for any adversely affected third party, if the Land Use Authority conformed with the notice provisions of this Ordinance, as applicable, or for any person who had actual notice of the pending decision.

6. If the City has complied with the notice requirements, as provided by Chapter 25.08 herein, a challenge to the enactment of this Ordinance may not be filed with the District Court more than thirty (30) calendar days after the enactment.

D. Appeal Authority – Review on the Record.

1. The Council, acting as a Land Use Authority, or Appeal Authority, as the case may be, shall transmit to District Court the record of its proceedings, including its minutes, findings, orders, and, if available, a true and correct transcript of its proceedings.

2. If the proceeding was tape-recorded, a transcript of that tape recording is a true and correct transcript for purposes of this Section.

3. If there is a record, the District Court's review is limited to the record provided by the Land Use Authority, or Appeal Authority, as the case may be.

4. The court may not accept or consider any evidence outside the record of the Land Use Authority, or Appeal Authority, as the case may be, unless that evidence was offered to the Land Use Authority, or Appeal Authority, respectively, and the court determines that it was improperly excluded.

5. If there is no record, the Court may call witnesses and take evidence.

6. The filing of a petition does not stay the decision of the Land Use Authority, or Appeal Authority, as the case may be.

E. Staying of Decision.

1. Before filing a petition under this Chapter, or a request for mediation or arbitration of a constitutional taking issue under §63-34-13, Utah Code Annotated, 1953, as amended, the aggrieved party may petition the Appeal Authority to stay its decision.

2. Upon receipt of a petition to stay, the Appeal Authority may order its decision stayed pending District Court review if the Appeal Authority finds it to be in the best interest of the City.

3. After a petition is filed under this Chapter, or a request for mediation or arbitration of a constitutional taking issue is filed under §63-34-13, Utah Code Annotated, 1953, as amended, the petitioner may seek an injunction staying the Appeal Authority's decision.

## **Chapter 25.10 Special Exceptions**

### **25.10.01 Intent and Purpose.**

This Chapter is provided to allow the opportunity for a Applicant(s) to present for review and decision an Application for a modification to the Public Works Standards, if the Applicant(s) believes that

special circumstances exist that merit such modification (hereinafter “Special Exception”). It is the intent of this Ordinance that a decision related to a Special Exception Application be a discretionary action by the Council, acting as the Land Use Authority, A decision by the Council related to a Special Exception Application shall be accompanied by findings of fact, following the receipt of a Commission recommendation, such recommendation also being accompanied by findings of fact.

For the purposes of this Ordinance, the procedures and requirements for the consideration of a Special Exception are provided to promote the full consideration of all items related to the proposed Special Exception. The Commission shall identify and address all items applicable to a Special Exception Application prior to providing a recommendation to the Council.

The Council shall identify and address all items applicable to a Special Exception Application prior to approving, approving with requirements, or denying the Special Exception Application.

**25.10.02 Special Exception Application – Council Identified as Land Use Authority – Commission Recommendation Required.**

A. The Council is hereby identified as the Land Use Authority for a Special Exception Application.

B. Prior to the Council considering a Special Exception Application, the Commission shall transmit a recommendation to the Council. The review procedures for the consideration of a Special Exception Application by the Council are summarized by Figure 8, herein.

**25.10.03 Allowed Special Exceptions.**

The following Special Exceptions may be considered and decided by the Council, following the receipt of a Commission recommendation, as required by Section 25.10.01, herein:

A. Delayed installation of Road and Street Improvements to a time certain other than required by the Public Works Standards.

B. The installation of a “half-street” other than required by the Public Works Standards.

**25.10.04 Special Exception Applications – Application Requirements.**

All Special Exception Applications, filed in the Office of the City Planner, shall provide the following information, necessary for the City Planner to determine the Application complete, as required by Section 25.10.06, herein:

A. Application Form. A Special Exception Application Form, completed and signed by the owner(s) of the Subject Property, or authorized agent of the owner(s). If the Application Form is signed by an authorized agent of the owner(s), the Application Form shall be accompanied by an affidavit identifying the agent as being duly authorized to represent the owner(s) in all matters related to the Special Exception Application. All persons with a fee interest in the Subject Property shall be required to join in and sign the Special Exception Application.

B. Special Exception Application Fees. The Special Exception Application shall include the payment of the all Special Exception Application fees and Review Fees, as established by the Council, and any total amount, or deposit amount, required to provide the services of the City Engineer, as provided and required by Section 25.10.05 herein.

C. Preliminary Subdivision Plat Materials. A Special Exception Application shall provide one (1) copy of all materials required for a complete Preliminary Subdivision Application, as required by Section 25.03.04 herein, except item 25.03.04(1) and 25.03.04(2).

D. Special Exception Statement of Justification and Reasons Statement of Reasons. A Special Exception Application shall include a Statement of Justification and Reasons, provided by the Applicant(s), detailing the basis for the proposed Special Exception for the Subject Property and identifying all circumstances and unique situations particular to the Subject Property that provide a basis, and warrant a favorable recommendation by the Commission for such Special Exception, and the approval of the Special Exception Application by the Council.

**25.10.05 Special Exception Application Engineering Review Fees.**

The Applicant(s) for a Special Exception Application approval shall pay all costs incurred by the City for the provision of City Engineering services, provided by a licensed engineer, selected by the City, and necessary to review the Special Exception Application materials for conformity to the requirements of this Ordinance, other applicable Land Use Ordinances and requirements, and accepted engineering practice.



**25.10.06 City Planner to Determine a Complete Special Exception Application.**

A. Within thirty (30) calendar days of the Special Exception Application being filed in the Office of the City Planner, and prior to the Special Exception Application being scheduled with the Commission (see Figure 8), the City Planner shall determine and find that the Special Exception Application is complete and contains all the information and material required for a complete Special Exception Application, as required by Section 25.10.04 herein (see Figure 4). As provided by the Act, the City Planner shall determine a Special Exception Application submitted and complete when the Application is provided in a form that complies with all the requirements of Section 25.10.04 herein, and all applicable Special Exception Application fees have been paid. The City Planner shall notify the Applicant, in writing, of the result of such determination. Following a Determination of a Complete Special Exception Application, the City Planner shall schedule the Special Exception Application for consideration with the Commission (see Figure 8) complying with all notice requirements for a public meeting to consider a Special Exception, as required by Chapter 25.08, herein.

B. A Special Exception Application lacking any of the Special Exception Application information and materials, as required by Section 25.10.04 herein, shall be cause for the City Planner to determine the Special Exception Application, as Incomplete. The requirements of Section 25.10.07 shall apply to all Special Exception Applications determined to be Incomplete (see Figure 4).

**25.10.07 Determination of an Incomplete Special Exception Application.**

A. A determination of an Incomplete Special Exception Application by the City Planner shall prohibit the City Planner from scheduling the Special Exception Application with the Commission and Council and shall prohibit the Commission or Council from considering any information or material related to the proposed Special Exception (see Figure 4).

B. Following a determination of an Incomplete Special Exception Application by the City Planner, the City Planner shall notify the Applicant, in writing, of the information lacking from the Special Exception Application. The City Planner shall allow a minimum of thirty (30) calendar days, from the date of notification of an Incomplete Special Exception Application, for the Applicant to provide the required information. If the Special Exception Application remains incomplete after a minimum of thirty (30) calendar days from date of notification, the City Planner shall return the entire Incomplete Special Exception Application to the Applicant(s), including any Special Exception Application Review fees paid (see Figure 4).

**25.10.08 Appeal of a Determination of Application Completeness Decision by the City Planner.**

Any person aggrieved by a decision of the City Planner related to a Determination of Application Completeness may appeal the decision to the Commission, the Commission acting as the Appeal Authority for Determinations of Application Completeness decisions.

**25.10.09 Special Exception Application Review Procedures.**

A. As provided by Section 25.10.02 the Council is the Land Use Authority for Special Exception Applications.

B. The review and approval procedure for a Special Exception Application is identified in Figure 8 herein.

C. The review and approval procedures for a Special Exception Application may be conducted concurrently with those required for a Preliminary Subdivision Application proposing a total of ten (10) or more lots, as identified by Section 25.03.09 herein.

**25.10.10 Special Exception Application – Approval Standards – Reasonable Approval Requirements Authorized.**

A. The Council shall not approve, and the Commission shall not recommend approval of a Special Exception Application, unless the evidence presented by the Applicant(s) clearly establishes the proposed Special Exception:

1. is an allowed Special Exception, as identified by Section 25.10.03 herein; and
2. 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; and
3. will not create any nuisance; and
4. sufficient evidence has been provided by the Applicant(s) to establish that circumstances exist on the Subject Property that provides a clear and reasonable basis for the approval of the Special Exception Application.

B. Reasonable Requirements. The Council may require, and the Commission may recommend, reasonable requirements determined necessary to insure the Special Exception will not be detrimental

to the health, safety, or welfare of City residents, and will not create a nuisance. For a Special Exception Application requesting Delayed Installation of Road and Street Improvements to a time certain other than required by the Public Works Standards the Council shall require such Road and Street Improvements be installed at a time certain, and require necessary guarantees sufficient to guarantee the installation of the required Road and Street Improvements, as required by the Council with the approval of the Special Exception Application.

**25.10.11 Effect of Approval, With or Without Requirements, of a Special Exception Application and Effective Period.**

The approval of a Special Exception Application, with or without requirements, by the Council shall not constitute a final approval of any subdivision or any other Land Use Application by the City. A Special Exception Application approval shall not authorize the division or development of the Subject Property, but allows the Applicant(s) to proceed with the preparation of the Final Subdivision Application for the Subject Property.

As provided by the Act, the continuing validity of a Special Exception Application is conditioned upon the Applicant(s) proceeding after approval to implement the approval with reasonable diligence. For the purposes of this Ordinance and this Section, the approval of a Special Exception Application shall be effective for a period of one (1) year from the date of approval by the Council, at the end of which time the Applicant(s) shall have submitted a Final Subdivision Application to the Office of the City Planner. If a Final Subdivision Application is not received in the Office of the City Planner within one (1) year, the Special Exception Application approval for the Subject Property shall be rendered void and invalid.

**25.10.12 Site Preparation Work Prohibited.**

No installation of improvements shall take place on any Subject Property, and no building permits shall be issued by the City, until a Final Subdivision Application has been approved and the Final Subdivision Plat has been recorded in the Office of the Box Elder County Recorder.

**25.10.13 Appeal of Special Exception Application Decisions.**

Any person aggrieved by a decision of the Council related to a Special Exception Application may appeal the decision to District Court, the Court acting as the Appeal Authority for Special Exception Application decisions by the Council. The Appeal Application shall be filed within thirty (30) calendar days after the action by the City Council.

**Chapter 25.11 Design and Construction Standards**

**25.11.01 Design and Construction Standards Applicable to all Subdivision Applications.**

A. The design and construction of all subdivisions shall be found by the Council and City Planner, acting as the Land Use Authority, as applicable, to preserve and protect the existing natural terrain, drainage, topsoil and trees of the Subject Property, as practicable.

B. The design and construction of all subdivisions located within the City shall recognize any hazardous or potentially hazardous conditions, including, but not limited to, landslides, mud and debris flows, rock falls, avalanches, areas of existing and potential ground subsidence, areas of high ground water, flood plains, drainage ways, and areas subject to fire dangers existing on the Subject Property. No Preliminary or Final Subdivision Application shall be approved by the Land Use Authority, with responsibility for the Subdivision Application, until such hazard(s) have been removed, or the design and layout of the proposed subdivision eliminates, or minimizes, any hazardous or potentially hazardous conditions to the extent determined necessary by the Land Use Authority.

C. The installation and construction of all required subdivision improvements, facilities, services, and amenities shall comply with all standards and requirements, as applicable, and as provided and required by the Public Works Standards.

**25.11.02 Design and Configuration of Lots and Parcels.**

A. No subdivision lot or parcel shall be divided by any municipal or County boundary line, or by any road, street, alley, or other lot.

B. No wedge-shaped or pie-shaped lot or parcel shall be less than thirty (30) feet in width measured at the front property line.

C. All side lot lines shall be located to be generally at right angles or radial to road and street rights-

of-way lines.

D. All subdivision lots and parcels shall front on a public road or street, or on a private street, court, or private driveway with direct access to a public road or street, and as approved by the Land Use Authority, with responsibility for the Subdivision Application.

#### **25.11.03 Street Design Requirements.**

A. Streets to Conform to Official Maps. The proposed subdivision road and street layout shall conform to all Brigham City Official Maps, including the Brigham City Transportation Plan, as adopted.

B. Through Traffic. All Minor Streets located within a subdivision shall be located and designed to discourage through traffic.

C. Stub Streets. Necessary stub streets shall be provided where required by the Land Use Authority to connect to adjacent undeveloped land and new streets shall connect to existing stub streets located in adjacent subdivision areas. If the length of the stub street is greater than \_\_\_\_\_feet from the centerline of the connecting street, the stub street shall provide the required turn around radius as a cul-de-sac street.

D. Road and Street Right-of-Way Widths. All roads and streets shall comply and provide the minimum road and street right-of-way widths as required by the Public Works Standards.

E. Road and Street Pavement Widths. All roads and streets shall comply and provide the minimum road and street pavement widths as required by the Public Works Standards.

F. Road and Street Shoulders. Road and street shoulders, a minimum width of ten (10) feet, shall be provided on all roads and streets where no curbs are provided.

G. Half-Streets. Half-streets shall not be permitted within any subdivision, unless approved as a Special Exception, as provided herein..

H. Cul-de-sac Streets. Cul-de-sac streets serving no more than twenty (20) lots, or parcels, and not exceeding more than six hundred fifty (650) feet in length, measured from the radius point of the cul-de-sac to the centerline of the connecting road or street, may be approved by the Land Use Authority provided the cul-de-sac provides a minimum turn around radius of fifty (50) feet, and the outside curb or pavement edge radius shall be a minimum of forty (40) feet. Cul-de-sac streets intended to be temporary shall comply with the above requirements.

I. Maximum Number of Roads and Streets at an Intersection. No more than four (4) roads and streets shall enter an intersection.

J. Angle of Road and Street Intersections. Roads and streets shall intersect at ninety (90) degrees.

K. Centerlines of Intersecting Roads and Streets. Two (2) subordinate roads or streets, meeting a through street from opposite sides, shall meet at the same point, or their centerlines shall be offset a minimum of two hundred (200) feet.

#### **25.11.04 Street Naming.**

All proposed subdivision roads and streets shall have the same road and street coordinate reference and name as existing roads and streets that are in alignment. There shall be no duplication of any road or street coordinate reference or names. All road and street names shall be approved by the Land Use Authority, responsible for the Subdivision Application approval.

#### **25.11.05 Road and Street Curvature and Alignment Requirements.**

A. Horizontal Curves. To provide necessary sight distances, when a road or street right-of-way deflects more than five (5) degrees, connection shall be made by horizontal curves. The minimum center-lines radii for Minor Streets shall be one hundred fifty (150) feet and of all other roads and streets shall be three hundred (300) feet. For Collector and Major Streets a minimum tangent of one hundred (100) feet shall be required between a curve and street intersection; a minimum tangent of one hundred (100) feet shall be required between reverse curves. All horizontal alignments shall be limited to maximum of thirteen and half (13½) degree curve.

B. Vertical Curves. Vertical curves shall be used at all changes of grades exceeding one (1) percent and shall be designed to provide minimum sight distances of two hundred (200) feet for Minor Streets and three hundred (300) feet for all other streets, except that vertical curves for Major Streets shall be as determined by the current specifications of the American Association of State Highway Transportation Officials.

C. All changes in vertical alignment shall be made by vertical curves with a minimum length of two hundred (200) feet for minor streets and three hundred (300) feet for major streets.

**25.11.06 Frontage on Freeways or Major Highways.**

Where a subdivision abuts a Freeway or Highway, a frontage road may be required by the Land Use Authority, responsible for the Subdivision Application approval.

**25.11.07 Minimum Roadbed and Paving.**

The minimum roadbed grading and paving for Minor, Collector and Major Streets, Local Access Roads, Collectors and Arterials shall be provided as required by the Public Works Standards, as adopted.

**25.11.08 Maximum Cul-De-Sac Length.**

All cul-de-sacs shall be limited to a maximum length of six hundred fifty (650) feet, measured from the radius point of the cul-de-sac to the centerline of the connecting road or street, and shall provide adequate easements for drainage, as required by the City Engineer.

**25.11.09 Maximum Road and Street Grade.**

All subdivision roads and streets shall comply with the maximum grades as follows:

A. Major and Collector Roads and Streets. A maximum grade of twelve percent (12%). Sustained grades in excess of one thousand (1,000) feet shall not exceed a maximum of ten percent (10%).

B. Minor Roads or Streets. A maximum grade of ten percent (10%). Sustained grades in excess of one thousand (1,000) feet shall be limited to a maximum of seven percent (7%).

C. Cul-De-Sacs. Any negative grade progressing toward the turnaround shall be limited to a maximum grade of six percent (6%). All cul-de-sacs shall terminate with a grade not to exceed three percent (3%) for the last one hundred (100) feet of travel surface.

D. Intersections. The maximum grade of an intersection shall not exceed three percent (3%) for a minimum distance of fifty (50) feet each way from the centerline of the intersection.

E. Maximum grades. Approved only when accompanied by changes to a lesser grade, and where length of that portion of that road at maximum grade is less than six hundred feet (600').

**25.11.10 Sidewalks, Curbs, and Gutters Required.**

All subdivisions shall provide sidewalks, curbs, and gutters, meeting the requirements of the Public Works Standards, on both sides of all public streets.

**25.11.11 Traffic Control Devices.**

All proposed traffic control devices shall conform to the standards of the Manual of Uniform Traffic Control Devices (MUTCD).

**25.11.12 Pedestrian Cross-Walks.**

Where blocks exceed one thousand (1,000) feet in length, pedestrian rights-of-way not less than ten (10) feet wide may be required when determined necessary by the Land Use Authority for adequate pedestrian circulation. Cross walk improvements (paving) not less than five (5) feet wide shall be placed within the rights-of-way, as required by the Land Use Authority.

**25.11.13 Lot Size Standards.**

All lots and parcels shall meet the minimum area requirements, or maximum density requirements of the Zoning District in which the Subject Property is located.

**25.11.14 Easement Standards.**

All required subdivision utility easements shall follow the rear and side lot lines, where practical, and shall be a minimum total width of twenty (20) feet, apportioned equally between the adjoining lots, parcels, or property.

A. When front property line easements are required, a minimum of ten (10) feet shall be provided. If required, easements for the perimeter of the Subject Property shall not be less than twenty (20) feet in width.

B. All required subdivision easements shall be located and designed to provide efficient installation and maintenance of all utilities and subdivision features. Special guying easements at corners may be required. Public utility installations shall be so located to permit multiple installations within all easements. The subdivision's final grades shall be established prior to any public utility installations.

#### **25.11.15 All Utilities to Be Underground.**

All power lines, telephone lines and other utility lines shall be provided underground, unless otherwise approved by the Land Use Authority, supported by the recommendation of the City utility and engineering staff.

#### **25.11.16 Alleys.**

The Land Use Authority may approve service accesses to the interior of blocks. The location and dimensions of such service accesses (alleys) shall be identified on the Final Subdivision Plat.

#### **25.11.17 Required Infrastructure and Services.**

A. **Culinary Water System and Facilities.** All Preliminary Subdivision Application approvals, and all Final Subdivision Application approvals, shall require that the subdivision, as approved, provide all culinary water system and all culinary water facilities necessary to provide culinary water services to all lots and parcels, as required by the Public Works Director, acting as the City's Culinary Water Authority, and the Land Use Authority, responsible for Subdivision Application approval.

B. **Sanitary Sewer System and Facilities.** All Preliminary Subdivision Application approvals, and all Final Subdivision Application approvals, shall require that the subdivision, as approved, provide all sanitary sewer system and all sanitary sewer facilities necessary to provide sanitary sewer services to all lots and parcels, as required by the Public Works Director, acting as the City's Sanitary Sewer Authority, and the Land Use Authority, responsible for Subdivision Application approval.

C. **Subdivision Roads and Streets.** All Preliminary Subdivision Application approvals, and all Final Subdivision Application approvals, shall require that the subdivision, as approved, provide all roads and streets, and all transportation system facilities necessary to provide transportation and circulation facilities to all lots and parcels, as required by the City Engineer and City Planner, and the Land Use Authority, responsible for Subdivision Application approval.

E. **Storm Drainage and Flood Control Facilities.** All Preliminary Subdivision Application approvals, and all Final Subdivision Application approvals, shall require that the subdivision, as approved, provide all storm drainage and flood control facilities necessary to provide storm drainage and flood control facilities to all lots and parcels, as required by the City Engineer, and the Land Use Authority, responsible for Subdivision Application approval.

F. **Fire Protection, Suppression, and Access Facilities.** All Preliminary Subdivision Application approvals, and all Final Subdivision Application approvals, shall require that the subdivision, as approved, provide all fire protection, fire suppression, and access facilities necessary to provide fire protection, fire suppression, and access facilities to all lots and parcels, as required by the City Fire Marshal, and the Land Use Authority, responsible for Subdivision Application approval.

G. **Secondary Water System and Facilities.** All Preliminary Subdivision Application approvals, and all Final Subdivision Application approvals, may be required to provide all secondary water system and all secondary water facilities necessary to provide secondary water services to all lots and parcels, as required by the City Engineer, and the Land Use Authority, responsible for Subdivision Application approval.

H. **Electrical Power System and Facilities.** All Preliminary Subdivision Application approvals, and all Final Subdivision Application approvals, shall require that the subdivision, as approved, provide all electrical power system and all electrical power facilities necessary to provide electrical power services to all lots and parcels, as required by the Director of Public Power, and the Land Use Authority, responsible for Subdivision Application approval.

I. **Fiber Optics.** All Preliminary Subdivision Application approvals and all Final Subdivision Application approvals shall require that the subdivision, as approved, provide all necessary infrastructure to support the installation of fiber optic materials and equipment, as required by the Director of Public Power.

### **Chapter 25.12 Guarantees for Subdivision Improvements, Facilities, and Amenities**

#### **25.12.01 Necessary Guarantees.**

As part of the Final Subdivision Application approval, and recording of the Final Subdivision Plat in the Office of the Box Elder County Recorder's Office, the Land Use Authority shall require the necessary guarantees and securities sufficient to insure the installation and construction of all required subdivision improvements, facilities, services and amenities, as applicable, and as provided and required by the Public Works Standards, as adopted.

An Applicant(s) for Final Subdivision Approval shall guarantee the installation of all required subdivision improvements, facilities, services, and amenities, as applicable, by one (1) of the following

methods:

A. The Applicant(s) shall furnish and file with the City Recorder a bond with corporate surety in an amount equal to the cost of the required subdivision improvements, as estimated by the Engineer of Record and as approved by the City Engineer, plus an additional ten percent (10%), to assure the installation of such subdivision improvements, facilities, services, and amenities within a two (2) year period, which bond shall be approved by the City Attorney and shall be filed with the City Recorder.

B. The Applicant(s) shall deposit in escrow with an escrow holder approved by the City Attorney an amount of money equal to the cost of the subdivision improvements, as estimated by the Engineer of Record and approved by the City Engineer, plus an additional ten percent (10%), to assure the installation of such subdivision improvements within a two (2) year period from the approval of the Final Subdivision Application, which escrow agreement shall be approved by the City Attorney and shall be filed with the City Recorder.

C. The Applicant(s) shall furnish and file with the City Recorder a letter of credit in an amount equal to the cost of the subdivision improvements, estimated by the Engineer of Record and approved by the City Engineer, plus an additional ten percent (10%), to assure the installation of such subdivision improvements within a two (2) year period immediately following the approval of the Final Subdivision Application, which letter of credit shall be approved by the City Attorney and shall be filed with the City Recorder.

D. Phased Development. Whenever a subdivision is developed a portion at a time, such development shall be in an orderly manner and in such a way that the required subdivision improvements will be continuous and all required subdivision improvements will be made available for the full protection of the health, welfare, and safety of all residents of the subdivision, and the City.

#### **25.12.02 Inspection of Subdivision Improvements.**

The City Engineer shall inspect, or cause to be inspected, all required subdivision improvements in the course of construction, installation, or repair. No excavations for the installation of any subdivision improvements shall be covered or backfilled until such installation shall have been approved by the City Engineer. If any such installation is covered before being inspected and approved, it shall be uncovered after notice to uncover has been issued to the Applicant(s) by the City Engineer.

#### **25.12.03 Conditional/Final Acceptance of Subdivision Improvements – Guarantee Period.**

The Applicant(s) shall warrant and guarantee the subdivision improvements provided for herein and every part thereof, will remain in good condition for a minimum period of two (2) years, after the City has granted conditional acceptance of the subdivision improvements in writing. The Applicant(s) agrees to make all repairs to and maintain the subdivision improvements and every part thereof in good working condition during the guarantee period with no cost to the City. At the conclusion of the two (2) year guarantee period, the improvements shall be inspected and if found to be satisfactory, the City will grant a final acceptance of all improvements and record a release of financial guarantee to the Applicant(s).

#### **25.12.04 Default.**

In the event the Applicant(s) defaults, or fails or neglects to satisfactorily install the required subdivision improvements within two (2) years from the date of Final Subdivision Application approval, the Council may declare the guarantee to be in default, and may require the installation of all required subdivision improvements using the guarantee amounts for such installation of subdivision improvements.

### **Chapter 25.13 Definitions**

**Act.** Means Title 10 Chapter 9a of the Utah Code Annotated, as amended.

**Affected Entity.** Means a County, municipality, independent special district under Title 17A, Chapter 2, Independent Special Districts, local district under Title 17B, Chapter 2, Local Districts, school district, interlocal cooperation entity established under Title 11, Chapter 13, Interlocal Cooperation Act, specified public utility, a property owner, a property owners association, or the Utah Department of Transportation, if:

- A. the entity's services or facilities are likely to require expansion or significant modification because of an intended use of land;
- B. the entity has filed with the municipality a copy of the entity's general or long-range plan; or
- C. the entity has filed with the municipality a request for notice during the same calendar year and before the municipality provides notice to an affected entity in compliance with a requirement imposed under this chapter.

**Agent.** Means the person with written authorization to represent a property owner.

**Appeal Authority.** Means the person, board, commission, agency, or other body designated by this

Ordinance to decide an appeal of a decision of a Land Use Application.

**Applicant.** Means any person(s) presenting an Application for an approval required by this Ordinance.

**Application.** Means a written request for an approval and completed in a manner prescribed by this Ordinance for review and decision by a Land Use Authority.

**Chief Executive Officer.** Means the:

- A. Mayor in municipalities operating under all forms of municipal government except the Council-Manager form; or
- B. City Manager in municipalities operating under the Council-Manager form of municipal government.

For the purposes of this Ordinance, the Brigham City Mayor is identified as the Brigham City Chief Executive Officer.

**City Attorney.** Means an attorney admitted to practice law in the State of Utah and so appointed by the City.

**City Engineer.** Means a registered Civil Engineer so appointed by the City, or designee.

**City Planner.** Means the person so appointed by the City, or designee.

**City Recorder.** Means the person so appointed by the City.

**Code.** Means the Utah Code Annotated, 1953, as amended

**Commission.** Means the Planning Commission of Brigham City, Utah.

**Constitutional Taking.** Means a governmental action that results in a taking of private property so that compensation to the owner of the property is required by the:

- A. Fifth or Fourteenth Amendment of the Constitution of the United States; or
- B. Utah Constitution Article I, Section 22.

**Council.** Means the duly elected City Council of Brigham City, Utah.

**Cul-de-sac.** Cul-de-sac streets serving no more than twenty (20) lots, or parcels, and not exceeding more than six hundred fifty (650) feet in length, measured from the radius point of the cul-de-sac to the centerline of the connecting road or street and provides a minimum turn around radius of fifty (50) feet, and the outside curb or pavement edge radius shall be a minimum of forty (40) feet. Cul-de-sac streets intended to be temporary shall comply with the above requirements.

**Culinary Water Authority.** Means the department, agency, or public entity with responsibility to review and approve the feasibility of the culinary water system and sources for the subject property. For the purposes of this Ordinance, the Brigham City Public Works Director is identified as the Brigham City Culinary Water Authority.

**Dedication.** Means the setting aside of land by an owner for any public use for the enjoyment of the public and owned by a public agency.

**Easement.** Means that portion of a lot, parcel, or tract reserved for present or future use by a person or agency other than the fee owner(s) of the property. The easement may be for use under, on, or above said lot or land parcel.

**Exaction.** Means a requirement or condition imposed on a Subdivision Application if:

- A. an essential link exists between a legitimate governmental interest and each exaction; and
- B. each exaction is roughly proportionate, both in nature and extent, to the impact of the proposed development.

**General Plan.** Means the Brigham City General Plan, such document setting forth general guidelines for proposed future development of the land within Brigham City.

**Land Use Application.** Means an application required by a municipality's land use ordinance. For the purposes of this Ordinance, a Sketch Plan Application, a Preliminary Subdivision Application, and Final Subdivision Application are determined to be Land Use Applications.

**Land Use Authority.** Means a person, board, commission, agency, or other body designated by the local legislative body to act upon a land use application. For the purposes of this Ordinance, the City Planner and Council are both identified as a Land Use Authority, being designated as such by the passage of this Ordinance by the Brigham City Council.

**Land Use Ordinance.** Means a planning, zoning, development, or subdivision ordinance of the municipality, but does not include the general plan. This Ordinance is a Land Use Ordinance of Brigham City, Utah.

**Land Use Permit.** Means a permit issued by a Land Use Authority. For the purposes of this Ordinance, a Preliminary Subdivision Application approval and a Final Subdivision Application approval are identified as a Land Use Permit.

**Legislative Body.** Means the duly elected City Council of Brigham City, Utah.

**Lot Line Adjustment.** Means the relocation of the property boundary line in a subdivision between two adjoining lots with the consent of the owners of record.

**Mayor.** Means the duly elected Mayor of Brigham City, Utah.

**Monument.** A permanent survey marker established by the Box Elder County Surveyor and/or a survey marker set in accordance with the City Engineer's specifications and referenced to Box Elder County survey monuments.

**Noncomplying Structure.** Means a structure that:

- A. legally existed before its current land use designation; and
- B. because of one or more subsequent land use ordinance changes, does not conform to the setback, height restrictions, or other regulations, excluding those regulations, which govern the use of land.

**Nonconforming Use.** Means a use of land that:

- A. legally existed before its current land use designation;
- B. has been maintained continuously since the time the land use ordinance governing the land changed; and
- C. because of one or more subsequent land use ordinance changes, does not conform to the regulations that now govern the use of the land.

**Official Map.** Means a map drawn by municipal authorities and recorded in a County recorder's office that:

- A. shows actual and proposed rights-of-way, centerline alignments, and setbacks for highways and other transportation facilities;
- B. provides a basis for restricting development in designated rights-of-way or between designated setbacks to allow the government authorities time to purchase or otherwise reserve the land; and
- C. has been adopted as an element of the municipality's general plan.

**Owner.** Means any person who alone, jointly or severally with others, has a legal or equitable title to property.

**Person.** Means an individual, corporation, partnership, organization, association, trust, governmental agency, or any other legal entity.

**Plat.** Means a map or other graphical representation of lands being laid out and prepared in accordance with Section 10-9a-603, Section 17-23-17, or Section 57-8-13 of the Utah Code.

**Public Hearing.** Means a hearing at which members of the public are provided a reasonable opportunity to comment on the subject of the hearing.

**Public Meeting.** Means a meeting that is required to be open to the public under Title 52, Chapter 4, Utah Open and Public Meetings Act.

**Public Works Director.** Means the person so appointed by the City.

**Public Works Standards.** Means the Brigham City Public Works Standards, as adopted.

**Record of Survey Map.** Means a map of a survey of land prepared in accordance with Section 17-23-17 of the Utah Code.

**Right-of-Way.** Means any area provided for conveying vehicle and pedestrian traffic.

**Sanitary Sewer Authority.** Means the department, agency, or public entity with responsibility to review and approve the feasibility of sanitary sewer services or onsite wastewater systems. For the purposes of this Ordinance, the Brigham City Public Works Director is identified as the Brigham City Sanitary Sewer Authority.

**Special District.** Means an entity established under the authority of Title 17A, Special Districts, of the Utah Code, and any other governmental or quasi-governmental entity that is not a County, municipality, school district, or unit of the state.

**Special Exception.** An adjustment to a subdivision development standard and authorized as an adjustment to the requirements of this Ordinance, such adjustment requiring careful review.

**Specified Public Utility.** Means an electrical corporation, gas corporation, or telephone corporation, as those terms are defined in Section 54-2-1 of the Utah Code Annotated, as amended.

**Stub Street.** Means a stub at the end of a street to connect to adjacent undeveloped land for future new streets or shall connect to existing stub streets located in adjacent subdivision areas.

**Street.** Means a public right-of-way, including a highway, avenue, boulevard, parkway, road, lane, walk, alley, viaduct, subway, tunnel, bridge, public easement, or other way.

**Subdivision.** Means "subdivision" as defined by Section 25.01.05 herein, and the Act. Subdivision does not include any action, as identified and defined by Section 25.01.06 herein, and the Act.

**Subject Property.** Means the land area, identified by the Parcel Identification Number, provided by the Box Elder County Recorder's Office or Box Elder County Assessor's Office, for which an approval is required to comply with this Ordinance or the Act.

**Unincorporated.** Means the area outside of the incorporated area of a City or town.

**Zoning Map.** Means a map, adopted as part of a land use ordinance that depicts land use zones, overlays, or districts of Brigham City.



**NOTE:** Figure 1, Sketch Plan Review Procedures, is considered part of this ordinance and is under a separate document titled "Title 25 Flow Chart." Please refer to both documents when viewing Title 25.