

CHAPTER 29.04 - ADMINISTRATION ¹

Sections:

- 29.04.010 Land Use Authority
- 29.04.020 Appeal Authority
- 29.04.030 Administration of City's Land Use Ordinances

29.04.010 Land Use Authority

The decision making bodies and officials identified within this Ordinance shall have responsibilities for implementing and administering the Brigham City General Plan and the Brigham City's Land Use Ordinance, which include the City Zoning Ordinance, Subdivision Ordinance, and other Ordinances, as allowed by State law, and as contained in §10-9a *et. seq.* UCA, as amended.

A. City Council - The Brigham City Council ("Council") shall have the following powers and duties under this Ordinance:

1. To adopt, and to initiate amendments to the Brigham City General Plan, and all elements of the General Plan.
2. To adopt, and to initiate amendments to the Brigham City Zoning Ordinance.
3. To adopt, and to initiate amendments to the Brigham City Subdivision Ordinance.
4. To appoint a hearing officer to render a recommendation to the Council if an applicant asserts a deprivation of, or has been subject to, a taking of property without just compensation, or asserts some other constitutional invalidity, as provided by herein.
5. To establish a fee schedule by resolution for all approvals, permits and licenses required by this Ordinance, as provided herein.
6. To take such other action(s) not expressly delegated to the Planning Commission, the Appeal Authority, or the Community Development Department.

B. Decisions Final on Meeting Date, Exceptions. All decisions of the Council, made under this Ordinance, shall take effect on the date of the meeting when the decision is made, unless a different date is designated at the time the decision is made. The minutes of all meetings of the Council shall be filed in the office of the City Recorder. All such records shall be available for public review and access in accordance with the Government Records and Access Management Act, §63-2-101 *et. seq.* U.C.A., as amended.

C. Planning Commission

1. Creation, Composition. Appointment of Members. Expenses. - There is hereby created a planning commission within and for the City, to be known as the Brigham City Planning Commission. The Commission shall consist of seven (7) members and three (3) alternate members to be appointed by the Mayor, with the consent of the Council, from among residents of the City. Members shall be selected without respect to political affiliations and shall serve without compensation, except for reasonable expenses as determined by the Mayor with the consent of the Council. The Mayor shall also appoint a City Councilmember to serve as a liaison between the Planning Commission and City Council

2. Powers and Duties: The planning commission shall have the power and duties in accordance with the Land Use Development and Management Act section §10-9a-204 *et. seq.* U.C.A., as amended and the following.

a. The Commission shall be an advisory body to the Council on legislative matters pertaining to the General Plan, the land Use Ordinances of the City. The Commission shall have the following powers and duties:

b. To prepare, or cause to be prepared, the proposed Brigham City General Plan, any proposed plan element, any amendments thereto, and to submit the proposed plan, element or amendments to the Council.

c. To prepare or cause to be prepared the proposed Brigham City Zoning Ordinance, any amendments thereto, and to submit the Ordinance or amendments thereto to the Council.

d. To prepare or cause to be prepared the proposed Brigham City Subdivision Ordinance, any amendments thereto, and to submit the Subdivision Ordinance or amendments thereto to the Council.

e. To hear, review and recommend approval or denial of all Applications for a General Plan Amendment, Zoning Ordinance Amendment, or Zoning Districts Map Amendment (Rezone).

f. To hear, review, and approve, approve with revisions, or deny a Site Plan Application, for a Permitted Use proposing new construction of a building(s), or proposing any structural modifications to

¹Section 29-01 - 29-09 completely rewritten upon approval of Ordinance No. 07-13, dated 7/19/07

the exterior of an existing building(s) as authorized by this Ordinance, excluding Single-Family and Two-Family Dwellings.

g. To hear, review, and approve, approval with conditions, or denial of a Conditional Use Application, including a Site Plan for a Conditional Use.

h. To hear, review, and recommend approval or denial of Subdivision Applications to the Council, as authorized by the Brigham City Subdivision Ordinance.

i. Advise the Council on all other matters as the Council may direct.

3. Terms of Office of Members of Planning Commission. Vacancies. Removal of Members: The terms of office of the original appointive members shall be two and four years; four shall be appointed for two years, and four shall be appointed for four years. Thereafter the terms of office for each appointive member shall be four years. Vacancies occurring otherwise than through the expiration of terms shall be filled by appointment by the Mayor, with the consent of the City Council. Members may be removed after public hearing by a majority vote of the City Council for causes established within the rules of the Planning Commission or by a recommendation of the Mayor.

4. Chairman of Planning Commission. Rules: Record of Proceedings: The Planning Commission shall elect annually, a chairperson, during the first regularly held meeting in each new calendar year. The chairperson will be elected from among the members of the Planning Commission by a majority of the total membership. The Mayor shall appoint a vice-chairperson who will be named at the following regularly scheduled Planning Commission meeting. A chairperson shall serve for not more than two consecutive terms and shall only vote in the event of a tie vote. In the event of a vacancy of the Chairperson's position, prior to the expiration of the chairperson's term or any prior vacancy, a new chairperson shall be elected whenever a previously appointed vice chairperson position becomes vacant, the Mayor shall appoint a new vice chairperson. The Planning Commission shall establish and adopt bylaws or rules of procedure governing the conduct of meetings and operation of the Planning Commission. Upon adoption of these rules, they shall be submitted to the City Council for final approval and adoption by resolution. The Planning Commission, upon its own initiative, may amend the bylaws or rules of procedure, and thereafter, such amendments shall be submitted to the City Council for final approval and adoption by resolution. It shall also keep a public record of its proceedings.

29.04.020 Appeal Authority

The Brigham City Appeal Authority shall consist of five (5) members and whatever number of alternate members that the Mayor considers appropriate, each to be appointed by the Mayor for the term of five years, provided that the term of one member shall expire each year. Any member or alternate member may be removed for cause by the appointing authority upon written charges and after a public hearing if such public hearing is requested. Vacancy shall be filled for the unexpired term of any member or alternate member whose term becomes vacant.

A. Organization and Meetings

1. The Appeal Authority shall adopt bylaws for the regulation of its procedure and the conduct of its duties not inconsistent with the provisions of this title or of the Utah Code. Such bylaws, to become effective, shall first be approved by the City Council.

2. Decisions of the Appeal Authority shall become effective at the meeting in which the decision is made, unless a different time is designated in the Appeal Authority's rules.

B. Powers and Duties: The Appeal Authority shall have the following powers:

1. Appeals – Hear and decide appeals from any order, requirement, determination or decision of the Land Use Authority and/or Community Development Staff's application of the City's Land Use Ordinances. An appeal may not be used to waive or modify the terms or requirements of the City's Land Use Ordinances.

2. Special Exceptions – Hear and decide special exceptions to the terms of the zoning ordinance where the City Council has granted jurisdiction to the Board to do so. The Board may hear and decide special exceptions only if authorized to do so by the zoning ordinance and based only upon the standards contained in the zoning ordinance.

3. Variances – Hear and decide all applications for variance from the terms of the zoning ordinance other than allowing a use variance. Such decisions shall be made in accordance with State law, Section 29.02.060 of this Chapter, and the rules adopted by the Board.

4. Nonconforming Use – Hear and make determinations regarding the existence, expansion, or modification of nonconforming uses.

C. Community Development Staff's Determinations. The Community Development Staff may decide certain matters as designated by the Board, and consistent with guidelines established by this Chapter, the Utah Code, and the rules adopted by the Board. Pursuant to this authority, the Zoning Administrator may decide all cases which are routine in nature, uncontested, do not impact on the character of the neighborhood, are primarily brought about by recent changes in the Zoning Ordinance creating a large number of nonconforming structures or uses, and which the Board has granted on an almost routine basis. The specific types of decisions the Zoning Administrator is authorized to make shall include:

1. Determination of a nonconforming use which can be verified by substantial evidence. Substantial evidence, for the purpose of this Section, shall mean official documents, including any written correspondence, receipts, permits, or documents issued by a public body or agency thereof, etc., that may establish the truth of the matter asserted by the applicant.

2. Consider additions or alterations to existing buildings and structures which are nonconforming as to height, area, or yard regulations provided the addition follows the existing wall lines and no additional dwelling units are added to the building or structure.

3. Change in status of a nonconforming use to an equally intensive or a less intense use than that immediately preceding the proposed use.

4. Final review and approval on plans where the Board has required that a final plan be submitted for special approval, showing that all the requirements imposed by the Board in granting the original approval have been complied with. All decisions of the Zoning Administrator made under this section may be appealed to the Board.

D. Appeals to the Appeal Authority. Appeals may be made to the Board of Adjustment by the City, the applicant, or any other person or entity adversely affected by a zoning decision administering or interpreting a zoning ordinance. All appeals shall be made as follows:

1. The appeal shall be made within thirty (30) days of the action or decision being appealed from by filing a notice of appeal with the Appeals Authority with the Community Development Department.

2. The notice of appeal shall specify the grounds for the appeal and circumstances related thereto. The notice shall allege that there was error in the order, requirement, decision, or determination made by an official or officials in the administration or interpretation of the zoning ordinance. A notice failing to allege such error or specifying the grounds for appeal may be summarily dismissed by the Appeals Authority with or without prejudice. Response to the above requirements shall be set forth in detail in the notice of appeal. The person or entity making the appeal shall have the burden of proving that an error has been made.

3. All papers constituting the record upon which the action appealed from was made shall be transmitted to the Appeals Authority.

4. The Appeals Authority shall set the appeal for hearing to be held within a reasonable time from the date the appeal is received. Written notice of the date set for hearing the appeal shall be mailed to the applicant at least seven days before the appeal hearing date. After hearing the appeal, the Appeals Authority may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from and may make such order, requirement, decision, or determination as ought to be made, and to that end shall have all the powers of the officer or body from which the appeal is made.

5. The filing of an appeal shall stay all proceedings and actions in furtherance of the matter appealed, pending a decision of the Appeals Authority. Said stay shall exist unless the Planning Commission or Supervisor/City Planner certifies to the Appeals Authority, after the notice of appeal shall have been filed, that by reason of facts stated in the certificate, the stay would cause imminent peril to life or property. In such case, proceedings shall not be stayed otherwise than by restraining order which may be granted by the District Court on application, notice, and due cause shown.

6. The concurring vote of three members of the Appeals Authority shall be necessary to reverse any order, requirement, decision, or determination of any administrative official, planning commission, or agency, or to decide in favor of the appellant.

7. The City, or any person adversely affected by any decision of the Appeals Authority, may petition the district court for a review of the decision, provided the petition is filed with the Court within 30 days after the Board's decision is final. In the petition, the appealing party may only allege that the Appeals Authority's decision was arbitrary, capricious, or illegal. The Appeal Authority may, after finding that it is in the best interest of the City to do so, stay its decision pending district court review.

E. Variances.

1. Definitions. A variance is a device which grants a property owner relief from certain provisions of the zoning ordinance when, because of the particular physical surroundings, shape, or topographical

conditions of the property, compliance would result in a particular hardship upon the owner, as distinguished from a mere inconvenience or a desire to reduce financial difficulties.

2. Variance Criteria. Unless otherwise provided in this Title, the Appeals Authority may grant a variance from the requirements of any provision of the zoning ordinance to the extent that such a grant shall be consistent with the provisions of this Section. Notwithstanding, the spirit of this Title must be observed and substantial justice done. Further, a previous variance can never set a precedent. Each case must be considered only on its individual merits. The Appeals Authority may grant a variance only if:

a. Literal enforcement of the zoning ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the zoning ordinance; and

b. There are special circumstances attached to the property that do not generally apply to other properties in the same zoning district; and

c. Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zoning district; and

d. The granting of the variance will not substantially affect the general plan and will not be contrary to the public interest; and the spirit of the zoning ordinance is observed and substantial justice done

3. In determining whether or not enforcement of the zoning ordinance would cause unreasonable hardship under this section, the Appeals Authority may not find an unreasonable hardship unless the alleged hardship:

a. is located on or associated with the property for which the variance is sought; and

b. comes from circumstances peculiar to the property, not from conditions that are general to the neighborhood.

4. In determining whether or not enforcement of the zoning ordinance would cause unreasonable hardship under this section, the Board may not find unreasonable hardship if the hardship is self-imposed or economic

5. In determining whether or not there are special circumstances attached to the property under this section, the Board may find that special circumstances exist only if the special circumstances:

a. relate to the hardship complained of; and

b. deprive the property of privileges granted to other properties in the same district.

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

7. Variances, once granted, shall run with the land.

8. Use variances may not be granted by the Board nor by any other body.

9. In granting a variance, the Board may impose additional requirements on the applicant that will:

a. mitigate any harmful effects of the variance; or

b. serve the same or similar purpose of the standard or requirement that is waived or modified.

29.04.030 Administration of City's Land Use Ordinances

This Section shall establish duties and responsibilities for the Supervisor of the Department of Community Development/City Planner, hereafter referred to as "Supervisor/City Planner," and other city officials and agencies, with respect to the administration of the City's Land Use Ordinance. Such duties and responsibilities are established to fulfill the purpose and intent of Title 2, Administration.

A. Supervisor of the Community Development Department/City Planner. In addition to duties described in Title 2, Brigham City's Administrative Code, and elsewhere in this Title, the duties of the Supervisor/City Planner shall be as follows:

1. Reviews and Approvals. The Supervisor/City Planner shall be authorized to undertake reviews, recommendations and approvals as described in Section 29.24.060 of this Title.

2. General Plan. The Supervisor/City Planner shall assist the Planning Commission in the development and implementation of the General Plan for the physical and economic growth of Brigham City, and shall prepare population and growth studies in support of the General Plan.

3. Administrative Staff Assistance and Technical Advice. The Supervisor/City Planner shall provide staff assistance to the Planning Commission and Appeal Authority. Staff assistance shall include attendance at regularly scheduled meetings and the preparation and publication of agendas. The Supervisor/City Planner shall act as technical advisor to the Mayor, City Council, and other City departments upon request, and other committees and commissions as the council may designate.

B. Delegate Responsibility. The Supervisor/City Planner may appoint authorized representatives to execute the responsibilities as described above.

C. Administrative Reviews And Permits

1. Review for Building Permits. The Chief Building Official shall submit all applications for building permits to the Supervisor/City Planner for review. Such review shall assure compliance with the regulations of this Code. The application for a building permit shall be accompanied by set of building plans, a plot plan showing lot lines and dimensions, locations of structures and improvements, requirements, building height limitations, and all data necessary to show that all yard requirements and other provisions of this Code are met. The Chief Building Official shall issue no building permit until the application is approved for zoning compliance by the Supervisor/City Planner.

2. Review for Business Licenses. The Supervisor/City Planner shall also review and approve all applications for business licenses, or renewal of such licenses, to assure compliance with this Code.

3. Site Plan Review. The Supervisor/City Planner shall receive all applications for Site Plan Review, as provided for in Section 29.06.050 of this Title. The Supervisor/City Planner Director shall receive all submittals, assure completeness, and prepare submittals for review.

4. Conditional Use Permit. Applications for Conditional Use Permit shall be submitted to the Supervisor/City Planner as provided for in Section 29.06.070 of this Title. The Supervisor/City Planner shall receive all submittals, assure completeness of submittals, and prepare submittals for review by the Planning Commission.

5. Temporary Use Permit. Applications for Temporary Use Permit shall be received by the Supervisor/City Planner and follow the procedure as described in Section 29.06.110 of this Title.

6. Amendments. Requests for amendments or changes to the City's Land Use Ordinances or Zoning Map shall be initiated with the Supervisor/City Planner.

7. Interpretation. The Supervisor/City Planner shall be responsible for interpretation of the City's Land Use Ordinances and the Zoning Map. An appeal of the Supervisor/City Planner's interpretation may be made to the City's Appeal Authority as provided for elsewhere in this Section 29.04.020(1) of this Title.

8. Home Occupation License Review. The Supervisor/City Planner shall review and make recommendations for Home Occupation License.

9. Sign Permit. As provided in Section 29.27, Sign Regulations, the Supervisor/City Planner shall be responsible for issuance of permits for signs, and for enforcement of sign regulation.

~~Chapter 29.04. Nonconforming Buildings and Uses.~~

~~29.04.010. Continuance of Nonconforming Use of Buildings, Structures and Land:~~

~~Except as otherwise provided in this Title, a nonconforming use of land or a structure may be continued:~~

~~A. Determination of Nonconforming Buildings and Uses. All matters regarding the nonconforming use of buildings and land shall be determined by the Board of Adjustment. Upon application, after public hearing on the matter, the Board of Adjustment shall determine if the use or building is nonconforming with respect to the current provisions of this Chapter. The Zoning Administrator may determine routine and uncontested requests to verify nonconforming uses as provided in Section 29.02.040 of this Title and the rules adopted by the Board of Adjustment.~~

~~B. Alteration or Modifications to Nonconforming Buildings and Structures. Nonconforming buildings and structure with respect to setbacks or height may be continued. Additions, enlargements or structural alterations may be made to the extent that they comply with all requirements of the Brigham City Code or conform to the provisions of Section 29.02.040 of this Title.~~

~~C. Nonconforming Use of Land. Except as otherwise provided by law, including statutory and case law, nonconforming use of land lawfully existing on the effective date of the ordinance rendering it nonconforming may be continued and maintained provided such nonconforming use shall not be expanded or extended into any other open land, except as otherwise provided in this Chapter. If the nonconforming use is discontinued for a continuous period of more than one year, it shall constitute an abandonment of the use and any future use of such land shall conform to the provisions of the zone in which it is located, except for single-family dwellings.~~

~~D. Nonconforming Use of Buildings and Structures. The nonconforming use of a building or structure lawfully existing on the effective date of the ordinance rendering it nonconforming may be continued and the building or structure maintained, and the use may be expanded or extended throughout such building or structure provided no structural alterations, except those permitted by law, are proposed or made for the~~

~~purpose of extension or expansion. (The addition of a solar energy device to a building shall not be considered a structural alteration.) If such nonconforming use is discontinued for a continuous period of more than one year, it shall constitute an abandonment of the use and any future use of the building or structure shall conform to the provisions of the zone in which it is located.~~

~~E. Change in Status of Nonconforming Use. If a nonconforming use is discontinued, it may be succeeded, upon approval of the Zoning Administrator, as provided in Section 29.02.040 of this Title, by an equally intensive or less intensive nonconforming use, provided such change is effected within one year from the first day of discontinuance. After a change to a less intensive use occurs, the use may not change back to a more intensive use.~~

~~F. Alternations or Modifications to Nonconforming Use. A use which has been declared nonconforming shall not be enlarged or moved except as provided in Section 29.02.040 of this Title.~~

~~G. Reconstruction of Nonconforming Building or Structure Partially Destroyed. A nonconforming building or structure or a building or structure occupied by a nonconforming use which is damaged or is destroyed by fire, flood, wind, earthquake or other calamity or Act of God, or the public enemy, or is removed due to dilapidation, may be restored and the occupancy or use of such building, structure, or part thereof, which existed at the time of such damage or destruction may be continued or resumed, provided that such restoration is started within a period of one (1) year and is diligently prosecuted to completion as evidenced by an active building permit. If any such restoration is not commenced within one (1) year, every future building or structure occupying the portion of the land on which the building was located shall conform to the provisions of this Title.~~

~~H. Amortization of Nonconforming Uses. Except as otherwise provided by the Utah Code, the Board, under authorization of the Utah Code, may provide for the timely modification or removal of a nonconforming structure or use of land. After appropriate financial studies to determine a valid amortization schedule, the Board of Adjustment may establish a reasonable time period during which the owner may recover or amortize the amount of investment in the nonconforming use, and after which the nonconforming use shall be modified or removed in order to comply with the General Plan and zoning ordinance.~~

~~I. Legal nonconforming status of school district property shall terminate upon a finding that the property has ceased to be used for school district purposes.²~~

² Ordinance No. 01-44, dated 12/20/01