

TITLE 12-000 CHAPTER 400

CHAPTER 12-400. ESTABLISHMENT AND PROCEDURAL MATTERS.

12-401. PLANNING AND ZONING COMMISSION ESTABLISHED. There is hereby created a Planning and Zoning Commission to be composed of six (6) members. Members of the Planning and Zoning Commission shall serve without compensation, except for reasonable expenses incurred in the performance of their duties as members of the Commission. The Richmond City Council shall appoint, upon at least a simple majority vote, each member of the Commission.

1. A member of the Richmond City Council shall be assigned as direct liaison between the Council and the Commission, but said Council member shall have no vote on any action brought before the Commission while being actively discussed or decided upon by the Commission.

12-402. TERM OF OFFICE. Each member of the Planning & Zoning Commission shall be appointed for a term of four years, with the opportunity for a second, consecutive term of four years should the City Council and the Commissioner so desire.

1. Terms of appointment shall be staggered so that one-half of the Commission membership will be eligible for reappointment/replacement every odd-numbered year.

a. Should a Commissioner leave prior to the conclusion of said Commissioner's term, the new Commissioner will be initially appointed to complete the original Commissioner's term after which the position shall be subject to reappointment/replacement on the regular schedule.

1) No Commissioner may receive more than two consecutive appointments.

b. Due to past circumstances, it shall be the goal of the Richmond City Council to bring the Planning & Zoning Commission appointments into harmony with the above schedule by December 31, 2016.

2. Commission members term of office shall become effective and expire on odd-numbered years.

3. Commission members may be removed from their position early only through voluntary resignation or for cause by the Richmond City Council following proper due process.

12-403. ORGANIZATION.

1. The members of the Planning and Zoning Commission shall select from within their own membership a Chairperson and such other officers as deemed necessary, and shall adopt rules and regulations for their organization and for the transaction of business and the conduct of their proceedings.

a. The Chair shall not vote except in the instance of a tie vote within the other members of the Commission.

2. The Planning and Zoning Commission shall meet on the first Tuesday of each month and at such other times as the Planning and Zoning Commission may determine necessary.

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- a. All meetings shall be open to the public, announced in advance by agenda posted in three public locations within Richmond City, and published on the State of Utah Public Meeting Notice Site.
- b. A recording of all such meetings shall be kept in accordance with the most recent directive of Utah Code Annotated and written minutes reflecting the matters of presentation, discussion and decision shall be kept.
 - 1) One copy of the approved minutes, signed by the Chair, from each meeting shall be deposited with, and kept on file at, the Richmond City office.
 3. Reports of official acts and recommendations of the Planning and Zoning Commission shall be public and made by the Chairperson in writing to the Richmond City Council and shall indicate how each member of the commission voted with respect to such act or recommendation in the event of a split vote.
 - a. A signed copy of the approved minutes of the P&Z Commission meeting involved shall accompany any recommendation(s) or decision(s) forwarded from the Commission to the Richmond City Council.
 - b. Any member of the Commission may also make a concurring or dissenting report or recommendation to the Richmond City Council.
 4. Four (4) members of the Planning and Zoning Commission shall constitute a quorum required for official action at any meeting of the Commission.

12-404. DUTIES AND POWERS. The Planning and Zoning Commission is an advisory Commission to the Richmond City Council in all matters dealing with land use matters and shall have all of the powers and duties explicitly given Planning and Zoning Commissions by Richmond City ordinance in keeping with the laws of the State of Utah save those as Land Use Authority which is reserved to the Richmond City Council. At a minimum, the Planning and Zoning Commission shall:

1. Conduct regular, advertised meetings at least once each month and at such other times as the Planning and Zoning Commission may determine to be necessary.
2. Prepare or review the General Plan and recommend the General Plan, and Amendments of the General Plan, to the Richmond City Council.
3. Prepare or review and recommend Land Use, Development and Management ordinances, zoning maps, and amendments thereto to the Richmond City Council.
4. Administer provisions of the Land Use, Development, and Management Ordinance where specifically authorized by said Ordinance.
5. Review, gather data, and recommend approval or denial of subdivisions and planned unit development (PUD) applications to the Richmond City Council.

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6. Review, gather data, compare with the intentions of the General Plan, and recommend approval or denial of requests to rezone land within the boundary of Richmond City to the Richmond City Council.

- a. A public hearing on a rezone request will not be held by the Commission.
- b. The public hearing process shall be reserved to the Land Use Authority.

12-405. DECISION APPEAL PROCESS.

1. Decisions of the Planning and Zoning Commission may first be appealed to the Richmond City Council.

2. Decisions of the Richmond City Council based only upon recommendations or decisions handed down by the Planning and Zoning Commission may be further appealed to either a Land Use, Development, and Management Appeals Judge (hereafter referred to as Appeals Judge) or to a Board of Adjustment.

3. Appeals of the decision of the Appeals Judge or Board of Adjustment shall go to the First District Court.

12-406. ESTABLISHMENT OF APPEAL AUTHORITY. The Richmond City Council shall establish either a Land Use, Development, and Appeals Judge, commonly referred to simply as the Appeals Judge, or a Board of Adjustment.

12-407. LAND USE, DEVELOPMENT AND MANAGEMENT APPEALS JUDGE.

1. The Appeals Judge need not hold a legal or paralegal degree, nor shall said Judge be required to be a member of the bar.

2. The appointment of the Appeals Judge will be based upon the best judgment of the Richmond City Council in keeping with the most accurate current knowledge relative to the character and abilities of the candidate.

a. The appointment of the Appeals Judge shall be made, through open vote, at a regularly scheduled, agenda meeting of the Richmond City Council.

3. The Richmond City Council may enter into an agreement with other cities relative to utilizing a single Appeals Judge for multiple municipalities.

4. The Appeals Judge will be appointed to a term of five (5) years.

a. Subsequent appointments are allowable without restriction.

b. The Appeals Judge may be removed from the position through resignation, mutual agreement to discontinue in the position, elimination of the position by the Richmond City Council, or for cause following due process.

5. The Richmond City Council may opt to establish a payment schedule for the Appeals Judge.

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6. The Appeals Judge will be expected to remain current and abreast of all relative ordinances, changes in Utah Code Annotated, and the results of judicial review relative to Land Use, Development, and Management.

12-408. BOARD OF ADJUSTMENT.

1. The Board of Adjustments shall be comprised of five (5) citizens living within the Richmond City limits.
2. The appointment of each of the individual members of the Board of Adjustment shall be made, through open vote, at a regularly scheduled, agenda meeting of the Richmond City Council.
3. Members of the Board of Adjustment shall serve without compensation, except for the reimbursement of reasonable expenses incurred in performing their duties as members of the board.
4. Each member of the Board of Adjustment shall serve for a term of five (5) years.
5. The first Board of Adjustment organized following the passage of this ordinance shall consist of one member appointed for a period of five years, one member appointed for a period of four years, one member appointed for a period of three years, one member appointed for a period of two years, and one member appointed for a single, one-year term.
 - a. As the original board members term expires, a replacement member shall be appointed for a period of five years.
 - 1) Should a board member leave the Board of Adjustment prior to the completion of his/her term, the replacement member shall be appointed only to complete the departing members term.
 - b. Board members may be appointed to a single consecutive term, no Board member serving for more than ten (10) years.
6. A Board of Adjustment member may be removed from the position through resignation, mutual agreement to discontinue in the position, elimination of the position by the Richmond City Council, or for cause following due process.
7. The Board of Adjustment shall elect a chairperson and may adopt such rules for its own proceedings as are deemed necessary; however, all such rules must be in keeping with the provisions of this Title and Title 10, Chapter 9a, Section 701.
8. Meetings of the Board shall be held at the call of the chairperson and at such other times as the board may determine.
 - a. The Chairperson, or in his/her absence the Acting Chairperson, may administer oaths and compel the attendance of witnesses.
 - b. The Board will designate a Secretary from within their body, and shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions,

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all of which shall immediately be filed in the Richmond City Office, which shall be the office of the Board, and shall be a public record.

9. The Board of Adjustment shall hear and decide:

- a. Appeals from zoning decisions applying the zoning ordinance;
- b. Special exceptions to the terms of the zoning ordinance; and
- c. Variances from the terms of the zoning ordinance.
- d. The Board of Adjustment may make determinations regarding the existence, expansion, or modification of nonconforming uses if that authority is delegated to them by the Richmond City Council through separate ordinance.

12-409. APPEALS.

1. The applicant or any other person or entity adversely affected by a decision administering or interpreting a zoning ordinance may appeal that decision applying to the zoning ordinance by alleging that there is error in any order, requirement, decision, or determination made by an official in the administration or interpretation of the zoning ordinance.
2. A verbal notice of appeal must be given to the Mayor or any member of the Richmond City Council by the appellant or his/her authorized representative no later than forty-eight (48) hours following the decision in meeting of the Richmond City Council or Planning & Zoning Commission in the instance where the latter has been designated authority to make such a final decision.
3. A formal written decision relative to any land use matter must be available to the public no later than thirty (30) days following the decision in meeting by the Richmond City Council or Planning & Zoning Commission in the instance where the latter has been designated to make such a final decision.
4. A written notice of appeal including all relevant details and signed by the appellant(s) must be received by the Richmond City Office no later than fifteen (15) working days following the publication of the formal written decision as cited in 3. above.

12-410. VARIANCES.

1. Any person or entity desiring a waiver or modification of the requirements of the zoning ordinance as applied to a parcel of property that he owns, leases, or in which he holds some other beneficial interest may apply to the Appeals Judge/ Board of Adjustment for a variance from the terms of the zoning ordinance.
2. The Appeals Judge/ Board of Adjustment may grant a variance only if:
 - a. Literal enforcement of the ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the land use ordinance;

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- b. There are special circumstances attached to the property that do not generally apply to other properties in the same zone;
 - c. Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zone;
 - d. The variance will not substantially affect the General Plan and will not be contrary to the public interest; and
 - e. The spirit of the land use ordinance is observed and substantial justice done.
3. In determining whether or not enforcement of the land use ordinance would cause unreasonable hardship under 12-410-2, the appeal 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 land use ordinance would cause unreasonable hardship under 12-410-2, the appeal authority may not find an unreasonable hardship if the hardship is self-imposed or economic.
 5. In determining whether or not there are special circumstances attached to the property under 12-410-2, the appeal authority 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 zone.
 6. The applicant shall bear the burden of proving that all of the conditions justifying a variance have been met.
 7. Variances run with the land.
 8. The appeal authority may not grant use variances.
 9. In granting a variance, the appeal authority may impose additional requirements on the applicant that will:
 - a. Mitigate any harmful effects of the variance; or
 - b. Serve the purpose of the standard or requirement that is waived or modified.
- 12-411. APPLICABILITY OF THE STATE OF UTAH PROPERTY RIGHTS OMBUDSMAN.**

1. Utah Code Annotated Title 13, Chapter 43 established the Office of the Property Rights Ombudsman.

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a. As established in Title 13, Chapter 43, Section 203 the duties of the Office of the Property Rights Ombudsman include but are not limited to:

1) assisting local government in analyzing actions with potential takings implications or other land use issues;

2) advising real property owners who:

a) have a legitimate potential or actual taking claim against a local government entity or have questions about takings, eminent domain, and land use law; or

b) own a parcel of property that is landlocked, as to the owner's rights and options with respect to obtaining access to a public street.

b. Under the provisions of Title 13, Chapter 43, Section 203 the Office of the Property Rights Ombudsman may not represent private property owners or local governments in court or in adjudicative proceedings.

2. Under the provisions of Title 13, Chapter 43, Section 204, the Office of Property Rights Ombudsman may, if requested, mediate or conduct or arrange arbitration for disputes between private property owners and government entities that involve eminent domain issues, actions for eminent domain, and/or disputes about relocation assistance.

a. The conduct of all such arbitration shall be in accordance with the provisions of Title 13, Chapter 43, Section 204.

b. Both the private party and the local government entity shall treat such arbitration process as outlined in Title 13, Chapter 43, Section 204 as though it were ordered by a court.

3. It is noted that under Title 13, Chapter 43, Section 204.(4), quote: "The filing with the Office of the Property Rights Ombudsman of a request for mediation or arbitration of a constitutional taking issue does not stay any county or municipal land use decision, including the decision of a board of adjustment."

4. At any time before a final decision on a land use application by the Appeals Judge/Board of Adjustment, a local government or a potentially aggrieved person may request a written advisory opinion from a neutral third party in keeping with the provisions of Title 13, Chapter 43, Section 206.

a. Certain limitations are contained in Title 13, Chapter 43, Section 205.

b. Any party seeking a written advisory must comply with the current provisions found in Title 13, Chapter 43, Section 205 and Title 13, Chapter 43, Section 206.

12-412. DISTRICT COURT REVIEW OF APPEALS JUDGE/ BOARD OF ADJUSTMENT DECISION.

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1. Any person adversely affected by any decision of the Appeals Judge/Board of Adjustment may petition the District Court for a review of the decision.
 - a. Such appeal shall not take place unless all administrative remedies as set forth above have been exhausted in keeping with Title 10, Chapter 9a, Section 801.(1).
2. In the petition, the plaintiff may only allege that the Appeals Judge/Board of Adjustment's decision was arbitrary, capricious, or illegal.
3. The petition is barred unless it is filed within 30 days after the Appeals Judge/Board of Adjustment's decision is final per Title 10, Chapter 9a, Section 801.(2)(a).
 - a. The time to file a petition is tolled from the date a property owner files a request for arbitration of a constitutional taking issue with the property rights ombudsman under Title 13, Chapter 43, Section 204 until 30 days after:
 - 1) The arbitrator issues a final award; or
 - 2) The property rights ombudsman issues a written statement under Title 13, Chapter 43, Section 204.(3)(b) declining to arbitrate or to appoint an arbitrator.
4. The Appeals Judge/Board of Adjustment shall transmit to the reviewing court the record of proceedings including minutes, findings, orders and, if available, a true and correct transcript of its proceedings.
 - a. If the proceeding was recorded, a transcript of that recording is a true and correct transcript for purposes of this subsection.
5. If there is a record, the district court's review is limited to the record provided by the Appeals Judge/Board of Adjustment.
 - a. The court may not accept or consider any evidence outside the Appeals Judge/Board of Adjustment record unless that evidence was offered to the Appeals Judge/Board of Adjustment and the court determines that it was improperly excluded by the Appeals Judge/ Board of Adjustment.
 - b. If there is no record, the court may call witnesses and take evidence.
6. The court shall affirm the decision of the Appeals Judge/Board of Adjustment if the decision is supported by substantial evidence in the record.
7. The filing of a petition does not stay the decision of the Appeals Judge/Board of Adjustment.
 - a. Before filing a petition under this section or a request for mediation or arbitration of a constitutional taking issue under Title 13, Chapter 43, Section 204, the aggrieved party may petition the Appeals Judge/Board of Adjustment to stay its decision.
 - b. Upon receipt of a petition to stay, the Appeals Judge/Board of Adjustment may order its decision stayed pending district court review if the Appeals Judge/Board of Adjustment finds it to be in the best interest of Richmond City.

c. After a petition is filed under this section or a request for mediation or arbitration of a constitutional taking issue is filed under Title 13, Chapter 43, Section 204, the petitioner may seek an injunction staying the Board of Adjustment's decision.