

Ordinance No. 06-38

**AN ORDINANCE ADOPTING AMENDMENTS TO LAND MANAGEMENT CODE
CHAPTER 15-14-5, ZONING ADMINISTRATION PENALTIES AND ENFORCEMENT,
OF THE MUNICIPAL CODE OF PARK CITY.**

WHEREAS, the Land Management Code is designed and enacted to implement the objectives of the Park City General Plan; to protect the general health, safety, and welfare of Park City's citizen's and property owners; to maintain the quality of life and experience for its residents and visitors; and to preserve the community's unique character and values;

WHEREAS, such enforcement is critical to the economic and cultural goals of the City as defined in the General Plan, the City Council's annual Vision Statement to be a World Class, Multi-Seasonal Destination Resort Community, and Principles 1, 3, 6 and 7; and

WHEREAS, the Planning Commission duly noticed and conducted public hearing at its regularly scheduled meeting on June 14, 2006 and forwarded to City Council a positive recommendation;

WHEREAS, the City Council duly noticed and conducted a public hearing at its regularly scheduled meeting on June 15, 2006;

WHEREAS, the clarifications herein are necessary to ensure clear and fair application of the regulations herein and simplify enforcement; and

WHEREAS, it is in the best interest of the residents of Park City, Utah to amend the Land Management Code to be consistent with the Utah State Code and the Park City General Plan, and to be consistent with the values and identified goals of the Park City community to protect health and safety, maintain the quality of life for its residents, and to preserve the community's unique character.

**NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF
PARK CITY, UTAH THAT:**

Section I. Findings. The recitals above and the Analysis section of the Staff Report dated June 14, 2006 are incorporated herein as findings in support of this ordinance.

Section II Effective Date. This Ordinance shall become effective upon publication.

Section III. Amendment. Land Management Code Chapter 15-14-5, of the Municipal Code of Park City is hereby amended as follows:

**15-14-5.
PENALTIES/ENFORCEMENT.**

The City has sole discretion in deciding whether to file a civil or criminal judicial case or pursue an administrative enforcement action for the violation of any of its ordinances or the provisions of this Code. The City may choose to file both, or one or the other. The enactment of this administrative remedy shall in no way interfere with the City's right to prosecute City ordinance violations as criminal offenses. The City may use any of the remedies available under the law including administratively, civilly and criminally. If the City chooses to file both civil and criminal charges for the same occurrence of violation, no civil penalties may be assessed, but all other remedies are available.

The provisions of this Code may be enforced by either civil or criminal actions in courts of appropriate and competent jurisdiction or by an administrative enforcement action. ~~Suit Action~~ may be brought by the City, or by affected Property Owners in the manner set forth below:

(A) **CRIMINAL CITATIONS.** The Building Official and other designated City officials may, when there is probably cause to believe that construction has occurred in violation of this ordinance or in violation of the Park City Municipal Code, issue a citation and swear out criminal complaints against the appropriate individuals and Business entities. Specific approval from the City Council for such misdemeanor citations is not required.

(B) **CIVIL ACTIONS.** The City, ~~with the authorization of the City Council,~~ may bring actions for civil and equitable relief, including enjoining specific land Uses and affirmative injunctions. The Building Official, Planning ~~Department~~ Director and other designated City Officials may recommend such actions at any time to the Council, or initiate an administrative enforcement action as set forth in the Park City Municipal Code, provided that no civil proceeding other than an administrative enforcement action shall be commenced without the specific authorization of the Council.

(C) **THIRD PARTY ACTIONS.** Individuals affected by zoning violations within Park City shall have the right to maintain private actions to enforce the Code without joining the City as a party.

PASSED AND ADOPTED this 15th day of June 2006

PARK CITY MUNICIPAL CORPORATION



Mayor Dana Williams

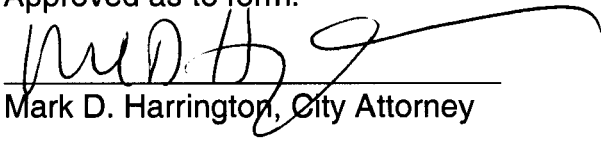
Attest:


Janet M. Scott, City Recorder



The seal is circular with a serrated outer edge. The text 'PARK CITY SUMMIT COUNTY UTAH' is written around the perimeter. In the center, there is a stylized logo featuring a mountain peak and a sun, with the word 'CORPORATE' written below it.

Approved as to form:



Mark D. Harrington, City Attorney

**PARK CITY MUNICIPAL CODE
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TITLE 15 - LAND MANAGEMENT CODE (LMC)
CHAPTER 9 - NON-CONFORMING USES AND NON-COMPLYING
STRUCTURES

Chapter adopted by Ordinance No. 00-25

CHAPTER 9 - NON-CONFORMING USES AND NON-COMPLYING STRUCTURES.

15-9-1. PURPOSE.

This Chapter regulates the continued existence of Non-Conforming Uses and Non-Complying Structures as defined in Chapter 15. While Non-Conforming Uses, Non-Complying Structures and improvements may continue, this Chapter is intended to limit enlargement, alteration, restoration, or replacement which would increase the discrepancy between existing conditions and the Development standards prescribed by this Code. In addition, Applications are reviewed to ensure that they are reducing the degree of non-conformity and improving the physical appearance of the Structure and site through such measures as landscaping, Building design, or the improved function of the Use in relation to other Uses.

15-9-2. DETERMINATION OF NON-CONFORMING STATUS.

(A) **BURDEN ON OWNER TO ESTABLISH LEGALITY.** The Owner bears the burden of establishing that any Non-Conforming Use or Non-Complying Structure lawfully exists.

(B) **DETERMINATION OF STATUS.** The Planning Director shall determine the Non-Conforming or Non-Complying status of Properties. Any decision of the Planning Director may be appealed within ten (10) calendar days of the decision to the Board of Adjustment. Upon appeal, the Board of Adjustment shall conduct a hearing and shall review the matter under de novo standard of review.

15-9-3. AUTHORITY TO CONTINUE.

(A) **CONTINUATION OF NON-CONFORMING USE.** A lawful Non-Conforming Use may continue subject to the standards and limitations of this Chapter.

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(B) **CONTINUATION OF NON-COMPLYING STRUCTURE.** A Non-Complying Structure that was lawfully constructed with a permit prior to a contrary change in this Code, may be used and maintained, subject to the standards and limitations of this Chapter.

15-9-4. ABANDONMENT OR LOSS OF NON-CONFORMING USE.

(A) **ABANDONMENT OF NON-CONFORMING USE.** A Non-Conforming Use that is discontinued for a continuous period of one (1) year is presumed abandoned and shall not thereafter be reestablished or resumed. Abandonment may also be presumed to have occurred if a majority of the primary structure associated with the nonconforming use has been voluntarily demolished without prior written agreement with the municipality regarding an extension of the nonconforming use; or the primary structure associated with the nonconforming use remains vacant for a period of one year.

Any party claiming that a nonconforming use has been abandoned shall have the burden of establishing the abandonment.

Any subsequent Use of the Building, Structure, or land must conform with the regulations for the Zoning District in which it is located

(B) **REBUTTABLE PRESUMPTION OF ABANDONMENT.** The presumption of abandonment may be rebutted upon a showing that during such period:

(1) any period of discontinued Use caused by governmental actions or an Act of God without any contributing fault by the Owner and the Owner did not intend to discontinue the Use; or

(2) the Owner has been actively and continuously marketing the Building, Structure, or land for sale or lease with the Use and the Owner has been maintaining the Building, Structure, or land in accordance with the Uniform Building Code; or

(3) the Owner can demonstrate no abandonment of the Use.

The property owner shall have the burden of establishing that any claimed abandonment has not in fact occurred

Comment [p3]: 10-9a-511(4)(d)

15-9-5. MOVING, ENLARGING, OR ALTERING NON-CONFORMING USES.

Comment [p1]: 10-9a-511(4)(c)

No Non-Conforming Use may be moved, enlarged, altered, or occupy additional land, except as provided in this Section.

Comment [p2]: 10-9a-511(4)(b)

(A) **ENLARGEMENT.** A Non-Conforming Use may not be enlarged, expanded, or extended to occupy all or a part of another Structure or site that it did not occupy on the date on which the Use became non-conforming. A Non-Conforming Use may be extended through the same Building or Structure provided no structural alteration of the Building or Structure is proposed or made for the purpose of the extension and the parking demand is not increased.

(B) EXTERIOR OR INTERIOR REMODELING OR IMPROVEMENTS TO BUILDING OR STRUCTURE.

Exterior or interior remodeling or improvements to a Structure containing a Non-Conforming Use shall be allowed provided there is no expansion of the area of the Non-Conforming Use.

(C) RELOCATION OF BUILDING OR STRUCTURE. A Building or Structure containing a Non-Conforming Use may not be moved unless the Use shall thereafter conform to the regulations of the Zoning District into which the Building or Structure is moved.

(D) CHANGE OF NON-CONFORMING USE TO ANOTHER NON-CONFORMING USE OR A CONFORMING USE. Except as provided in Section 15-9-5.(E) below, no Non-Conforming Use may be changed to another Non-Conforming Use. Whenever any Non-Conforming Use is changed to a conforming Use, such Use shall not later be changed to any Non-Conforming Use.

(E) HISTORICALLY SIGNIFICANT BUILDINGS EXCEPTION: CHANGE OF NON-CONFORMING USE TO ANOTHER NON-CONFORMING USE OF SIMILAR OR LESS-INTENSIVE LAND USE TYPE. Subject to the criteria below, a Non-Conforming Use located within a Building or Structure designated as historically significant pursuant to LMC Section 4.13 may be changed to another Non-Conforming Use of a similar or less intensive land Use type. A Non-Conforming

Use, which satisfies the criteria provided in Section 16-9-5(E)(4) herein shall be considered a similar or less intensive land Use type.

(1) APPLICATION. Application for any Non-Conforming Use must be made upon forms provided by the Planning Department. Upon filing of a Complete Application, the City shall post the Property indicating that an Application for modification of a Non-Conforming Use has been filed and that more detailed information may be obtained from the City.

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(2) NOTIFICATION OF ABUTTING PROPERTY OWNERS. Notice shall be provided pursuant to the Notice Matrix in Chapter 1. (See Section 15-1-19)

(3) BOARD OF ADJUSTMENT HEARING. Within thirty (30) working days of the Planning Department's receipt of a Complete Application, and after giving public notice, the Board of Adjustment shall hold a public hearing on the Non-Conforming Use Application. The Board of Adjustment shall either grant the Application in whole or in part, with or without modifications or conditions, or deny the Application. The Board of Adjustment's decision shall be made pursuant to criteria provided in Section 15-9-5(E)(4) below.

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(4) **CRITERIA.** The Board of Adjustment shall approve an Application to change a Non-Conforming Use to another Non-Conforming Use if the Applicant proves the following criteria:

(a) All reasonable measures will be undertaken to alleviate or reduce the incompatibility or adverse effects of the Non-Conforming Use or Building upon abutting Properties or in the neighborhood;

(b) All changes, additions, or expansions comply with all current laws except as to Use;

(c) The new Use will provide for enclosed storage of necessary equipment, materials, and refuse, rather than create a need for additional outside storage; and

(d) The new Use does not increase the parking requirement; or if there is an increase, the site plan meets the parking requirement and the Board of Adjustment finds that adjoining Properties and the neighborhood will not be adversely impacted by the increased parking demand.

(F) **DAMAGE OR DESTRUCTION OF BUILDING OR STRUCTURE WITH NON-CONFORMING USE.** If a Building or Structure that contains a Non-Conforming Use is allowed to deteriorate to a condition that the Structure is rendered uninhabitable and is not repaired or restored within six months after written notice to the property owner that the Structure is uninhabitable and that the Nonconforming use will be lost if the Structure is not repaired or restored within six months; or the property owner has voluntarily demolished a majority of the building that houses the Nonconforming use; or if a Building or Structure that contains a Non-Conforming Use, is destroyed fifty percent (50%) or more by fire or natural calamity, is voluntarily razed, or is required by law to be razed, the Non-Conforming Use shall not be resumed, and the Building or Structure shall not be restored unless it is restored to accommodate a conforming Use within a complying Structure. If a Building or Structure that contains a Non-Conforming Use is involuntarily destroyed in whole or in part due to fire or other calamity and the Structure or Use has not been abandoned, damaged less than fifty percent (50%) by fire or natural calamity; the Non-Conforming Use may be resumed and the Building or Structure may be restored to the condition prior to the destruction, provided such work is started within six months of such calamity, is completed within eighteen (18) months of work commencement, and the intensity of Use and degree of non-conformance is neither increased nor changed. ~~The extent of damage or destruction shall be the ratio of the estimated cost of restoring the Building or Structure to its condition before the damage or~~

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Comment [p4]: 10-9a-511(3)(b)

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Comment [p5]: 10-9a-511(3)(a)

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~~destruction to the estimated cost of duplicating the entire Building or Structure as it existed prior to the damage or destruction. The estimate shall be based on the current issue of A Building Standards@ published by the International Conference of Building Officials (I.C.B.O.):~~

15-9-6. NON-COMPLYING STRUCTURES.

No Non-Complying Structure may be moved, enlarged, or altered, except in the manner provided in this Section or unless required by law.

(A) REPAIR, MAINTENANCE, ALTERATION, AND ENLARGEMENT.

Any Non-Complying Structure may be repaired, maintained, altered, or enlarged, provided that such repair, maintenance, alteration, or enlargement shall neither create any new non-compliance nor shall increase the degree of the existing non-compliance of all or any part of such Structure.

(B) MOVING. A Non-Complying Structure shall not be moved in whole or in part, for any distance whatsoever, to any other location on the same or any other lot unless the entire Structure shall thereafter conform to the regulations of the Zone in which it will be located.

(C) DAMAGE OR DESTRUCTION OF NON-COMPLYING STRUCTURE.

If a Non-Complying Structure is allowed to deteriorate to a condition that the Structure is rendered uninhabitable and is not repaired or restored within six months after written

notice to the property owner that the Structure is uninhabitable and that the Non-complying Structure will be lost if the structure is not repaired or restored within six months; or the property owner has voluntarily demolished a majority of the Non-complying Structure or the building that houses a Non-complying structure .is destroyed fifty percent (50%) or greater by fire or natural calamity, or is voluntarily razed or is required by law to be razed, the Structure shall not be restored unless it is restored to comply with the regulations of the Zone in which it is located. If a Non-Complying Structure is involuntarily destroyed in whole or in part due to fire or other calamity and the Structure or Use has not been abandoned. damaged less than fifty percent (50%) by fire or natural calamity, the Structure may be restored to its original condition, provided such work is started within six months of such calamity, completed within eighteen (18) months of work commencement, and the intensity of Use is not increased. The extent of damage or destruction shall be the ratio of the estimated cost of restoring the Structure to its condition before the damage or destruction to the estimated cost of duplication the entire Structure as it existed prior to the damage or destruction. The estimate shall be based on the current issue of A Building Standards@ published by the International Conference of Building Officials (I.C.B.O.):

15-9-7. ORDINARY REPAIR AND MAINTENANCE AND STRUCTURAL SAFETY.

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The Owner may complete normal maintenance and incidental repair on a complying Structure that contains a Non-Conforming Use or on a Non-Complying Structure. This Section shall not be construed to authorize any violations of law nor to prevent the strengthening or restoration to a safe condition of a Structure in accordance with an order of the Building Official who declares a Structure to be unsafe and orders its restoration to a safe condition.

15-9-8. APPEALS.

Appeal from a Board of Adjustment decision made pursuant to this Chapter shall be made to the district court and not to City Council. Any person applying to the district court for review of any decision made under the terms of this Chapter shall apply for review within thirty (30) days after the date the decision is filed with the City Recorder as prescribed by state statute.

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TITLE 15 - LAND MANAGEMENT CODE (LMC)
CHAPTER 10 - BOARD OF ADJUSTMENT

Chapter adopted by Ordinance No. 01-17

15-10-1. ESTABLISHMENT OF BOARD.

In order to avail the City of the powers provided in Chapter 9 of Title 10 of the Utah Code (1953, as amended), there is hereby created a Board of Adjustment, which shall consist of five (5) members. There shall also be one non-voting alternate to vote when a regular member is absent. Members shall be appointed by the Mayor with the advice and consent of the City Council. The Council may fix per diem compensation for the members of the Board of Adjustment by resolution, based on necessary and reasonable expenses for meetings actually attended. All members of the Board of Adjustment shall reside within the City limits, and are deemed to have resigned if they move their residence from the City limits.

15-10-2. TERM OF OFFICE.

Each member of the Board of Adjustment shall serve for a term of five (5) years or until his successor is appointed and qualified provided that the term of the members of the first Board so appointed shall be such that

the term of one member shall expire each year. Vacancies shall be filled in the same manner as the original appointment for the balance of the unexpired term.

15-10-3. POWERS AND DUTIES.

(A) The Board of Adjustment shall hear and decide:

- (1) Appeals from zoning decisions applying Title 15, Land Management Code;
- (2) Special exceptions to the terms of the Land Management Code; and
- (3) Variances from the terms of the Land Management Code.

(B) The Board of Adjustment shall make determinations regarding the modification of Non-Conforming uses and shall hear appeals on the determination of Non-Conforming or Non-Complying status by the Director of the Planning Department, as provided in Title 15, Chapter 9.

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15-10-4. GROUNDS FOR REMOVAL.

Any Board member who is absent for two (2) consecutive regularly scheduled meetings, or a total of four (4) regularly scheduled meetings per year may be called before the City Council and asked to resign or be removed for cause by the Mayor, with the advice and consent of City Council. Additionally, the Mayor, with the advice and consent of City Council, may remove any member of the Board of Adjustment for cause if written charges are filed with the Mayor against the member. The Mayor shall provide the member with a public hearing if the member requests one.

15-10-5. ORGANIZATION.

(A) **CHAIRMAN.** The Board of Adjustment shall elect a Chairman and may adopt such rules for its own proceedings as are deemed necessary.

(B) **QUORUM.** No business shall be conducted unless at least three (3) members of the Board, not counting the alternate, are present.

15-10-6. MEETINGS.

Meetings of the Board shall be held at the call of the Chairman and at such other times as the Board may determine.

(A) **WITNESSES.** The Chairman of the Board of Adjustment or in his absence, the Acting Chairman, may administer oaths and compel the attendance of witnesses at such meetings, and all meetings shall comply

with Title 52, Chapter 4, Open and Public Meetings, of the Utah Code, as amended.

(B) **MINUTES.** Written minutes shall be kept of all Board meetings. Such minutes shall include:

- (1) The date, time and place of the meeting.
- (2) The names of members present and absent.
- (3) The substance of all matters proposed, discussed, or decided, and a record, by individual member, of votes taken.
- (4) The names of all citizens who appeared and the substance in brief of their testimony.
- (5) Any other information that any member requests be entered in the minutes.

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The minutes are public records and shall be available within a reasonable time after the meeting.

15-10-7. APPEALS.

See also 15-1-18

The Board shall hear and decide appeals from an Applicant or any other Person or entity, including any officer or board of the City, adversely affected by a final decision administering or interpreting the Land Management Code which alleges that there is an error in any order, requirement,

decision or determination of the Land Management Code.

The appeal must be made in writing and submitted to the Planning Department within ten (10) days of the decision. The Board may, in conformity with the provisions of the Code, 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 official from whom the appeal is taken. The Person or entity making the appeal has the burden of proving that an error has been made.

A Person may not appeal, and the Board of Adjustment may not consider, any amendments to the Land Management Code, or appeals of Conditional Use permits or Master Planned Developments, which shall be appealed to the City Council. Appeals may not be used to waive or modify the terms or requirements of the Land Management Code. Appeals shall be considered by the Board of Adjustment only on the record made before the Historic Preservation Board or Planning Commission.

15-10-8. SPECIAL EXCEPTIONS.

The Board may hear Applications for special exceptions to the terms of the Land Management Code, which apply to variances, modifications of Non-Conforming Uses, appeals and other matters upon which the Board is required to pass judgment. Applications for special

exceptions must be filed with the Planning Department, and the required fee paid in advance. No Application for a special exception shall be approved unless the Board of Adjustment shall determine that the proposed special exception is appropriate in the location proposed based upon its consideration of the general standards set forth below:

(A) The proposed Use and Development will be in harmony with the general and specific purposes for which the Land Management Code was enacted and for which the regulations of the district were established.

(B) The proposed Use and Development will not substantially diminish or impair the value of the Property within the neighborhood in which it is located.

(C) The proposed Use and Development will not have a material adverse effect upon the character of the Area or the public health, safety, and general welfare.

(D) The proposed special exception will be constructed, arranged and operated so as to be Compatible with the Use and Development of neighboring Property in accordance with the applicable district regulations.

(E) The proposed Use and Development will not result in the destruction, loss or damage to natural, scenic or historic features of significant importance.

(F) The proposed Use and Development will not cause material air, water, soil or

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noise pollution or other types of pollution.

The Board of Adjustment may impose conditions and limitations as may be necessary or appropriate to prevent or minimize adverse effects upon other Property and other improvements in the vicinity of the special exception or upon public facilities and services. These conditions may include but are not limited to: conditions concerning Use, construction, operation, character, location, landscaping, Screening and other matters relating to the purposes and objectives of the Land Management Code. Such conditions shall be expressly set forth in the motion granting the special exception. Violation of any such condition or limitation shall be a violation of this section and shall constitute grounds for revocation of the special exception.

15-10-9. VARIANCE.

(A) Any Person or entity desiring a waiver or modification of the requirements of the Land Management Code as applied to a Parcel or Property that he/she owns, leases, or in which he/she holds some other beneficial interest may apply to the Board of Adjustment for a variance from the terms of the Land Management Code.

(B) An Application for variance review must be filed with the Planning Department, and the required fee paid in advance. The Application shall state the nature of the hardship and the nature of the variance requested. If the request for a variance is a result of a denial of any Building Permit or Conditional Use approval, the Application shall so state, and all documents on file

concerning the matter shall be forwarded to the Board for review as a part of the request.

The Applicant or the City may present any information as might be reasonably required by the Board in evaluating the request.

(C) Variances shall be granted only if all of the following conditions are found to exist:

(1) Literal enforcement of the Land Management Code would cause an unreasonable hardship for the Applicant that is not necessary to carry out the general purpose of the Land Management Code;

(2) There are special circumstances attached to the Property that do not generally apply to other Properties in the same [~~district~~] zone;

(3) Granting the variance is essential to the enjoyment of a substantial Property right possessed by other Property in the same [~~district~~] zone;

(4) The variance will not substantially affect the General Plan and will not be contrary to the public interest; and

(5) The spirit of the Land Management Code is observed and substantial justice done.

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(D) (1) In determining whether or not enforcement of the zoning ordinance would cause unreasonable hardship under Subsection 15-10-9(C)(1), the Board of Adjustment may not find an unreasonable hardship unless the alleged hardship is located on or associated with the Property for which the variance is sought and comes from circumstances peculiar to the Property, not from conditions that are general to the neighborhood.

(2) In determining whether or not enforcement of the Land Management Code would cause unreasonable hardship under Subsection 15-10-9(C)(1), the Board of Adjustment may not find an unreasonable hardship if the hardship is self-imposed or economic.

(E) In determining whether or not there are special circumstances attached to the Property under Subsection 15-10-9(C)(2), the Board of Adjustment may find that special circumstances exist only if the special circumstances relate to the hardship complained of and deprive the Property of privileges granted other Properties in the same [~~district~~] zone.

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

(F) Variances run with the land.

(G) The Board of Adjustment may condition a variance by requiring the Owner to obtain a Building or other necessary permit within one (1) year of issuance of the variance, or the variance shall be null and void.

(H) The Board of Adjustment and any other body may not grant a use [~~variances~~] variance.

(I) In granting a variance, the Board of Adjustment may impose additional requirements on the Applicant that will:

(1) mitigate any harmful affects of the variance; or

(2) serve the purpose of the standard or requirement that is waived or modified.

15-10-10. PERSONS ENTITLED TO APPEAR.

At the hearing on any matter before the Board of Adjustment, any Person aggrieved or interested in the matter may appear in person or through his attorney to testify on the matter. The Applicant shall have the right to respond to testimony offered in opposition to the application.

15-10-11. DECISION.

Decisions of the Board of Adjustment become effective at the meeting in which the Board adopts written findings of fact, conclusions of law and conditions of approval, unless a different time is specifically designated by the Board.

15-10-12. VOTE NECESSARY.

The concurring vote of three (3) members of the Board shall be necessary to reverse any order, requirement, or determination of any such administrative official, board, or commission, or to decide in favor of the Applicant.

15-10-13. JUDICIAL REVIEW OF BOARD DECISION.

The City or any Person adversely affected by any decision of the Board of Adjustment may petition the District Court in Summit County for a review of the decision. In the petition, the plaintiff may only allege that the Board of Adjustment's decision was arbitrary, capricious, or illegal. The petition is barred unless it is filed within thirty (30) days after the Board of Adjustment's decision is filed with the City Recorder.

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TITLE 15 - LAND MANAGEMENT CODE (LMC)
CHAPTER 11 - HISTORIC PRESERVATION

*Chapter adopted by Ord. No. 02-07;
Chapter Amended in Entirety by Ord. No.
03-34*

**CHAPTER 11 – HISTORIC
PRESERVATION**

**15-11-1. ESTABLISHMENT OF
BOARD.**

Pursuant to the Historic District Act, Section 11-18-1, et seq. of the Utah Code, 1953, and other applicable power, there is hereby created a Park City Historic Preservation Board (HPB). The HPB shall be composed of five (5) members.

**15-11-2. TERMS AND
QUALIFICATIONS OF MEMBERS.**

Members of the HPB shall serve terms of three (3) years. No member may serve more than two (2) consecutive terms. The terms shall be staggered. Terms may expire on May 1, however, members of the HPB shall continue to serve until their successors are appointed and qualified.

(A) The Mayor shall appoint a new HPB member to fill vacancies that might arise and

such appointments shall be to the end of the vacating member's term.

(B) It is the first priority of the City Council that the HPB have technical representation in Historic preservation, therefore, when vacancies occur and if appropriate, it shall be the first consideration of the City Council to ensure that there is a licensed architect, or other professional having substantial experience in rehabilitation-type construction, serving on the HPB, and secondly that there is representation from the Park City Historical Society. After being notified by the City of a vacancy, at least two (2) nominations shall be rendered to the City Council by the Park City Historical Society if it desires to participate in the Application process.

(C) In addition, the HPB should include members with the following qualifications, or representing the following interests:

- (1) A member recommended by or associated with the Utah State Historical Society or Utah Heritage Foundation.

(2) A member living in the Historic District with demonstrated interest and knowledge of Historic preservation.

(3) A member appointed at large from Park City with demonstrated interest and knowledge of Historic preservation.

(4) A member associated with Main Street Business and commercial interests.

15-11-3. ORGANIZATION.

(A) **CHAIRMAN.** The HPB shall elect one of its members to serve as Chairman for a term of one (1) year at its first meeting in March. The Chairman may be elected to serve for one (1) consecutive additional term, but not for more than two (2) successive terms.

(B) **QUORUM.** No Business shall be conducted without a quorum at the meeting. A quorum shall exist when the meeting is attended by three (3) of the appointed members, including the Chairman.

(C) **VOTING.** All actions of the HPB shall be represented by a vote of the membership. A simple majority of the members present at the meeting in which action is taken shall approve any action taken. The Chairman may vote at the meetings.

15-11-4. ABSENCE DEEMED RESIGNATION OR GROUNDS FOR REMOVAL.

Any HPB member who is absent from two (2) consecutive regularly scheduled Board meetings, or a total of four (4) regularly scheduled meetings per calendar year may be called before the City Council and asked to resign or removed for cause by the Council. Members of the HPB are not required to reside within the City limits, however, the majority of the members shall reside in Park City.

15-11-5. PURPOSES.

The purposes of the HPB are:

(A) To preserve diverse and harmonious architectural styles and design preferences reflecting phases of the City's history and to encourage complimentary, contemporary design and construction through the creation of comprehensive Historic District Design Guidelines, and update as necessary;

Deleted: upset

(B) To protect and enhance the City's Historic appeal to tourists and visitors;

(C) To identify as early as possible and resolve conflicts between the preservation of cultural resources and alternative land Uses;

(D) To provide input to City Council towards safeguarding the heritage of the City in protecting Buildings of Significance and Contributing Buildings, Structures, Sites/Areas or Objects;

(E) To promote the private and public Use of Buildings of Significance and Contributing Buildings, Structures, Sites/Areas or Objects;

(F) To make recommendations to the City Council on policies and ordinances that may encourage Historic preservation;

(G) To communicate and promote the benefits of Historic preservation for the education, prosperity, and general welfare of the people;

(H) To provide input to staff, Planning Commission, and City Council on matters concerning the overall Development of the City's Historic preservation program;

(I) To make recommendations to the City Council on the Development of, and to administer, all City-sponsored preservation incentive programs;

(J) To review all appeals on action taken by the Planning Department regarding compliance with the Historic District Design Guidelines; and

(K) To review and take action on all determination of Historic preservation Applications submitted to the City.

15-11-6. ADDITIONAL DUTIES.

In addition to the powers set forth in Section 15-11-5, the HPB may, at the direction of the City Council:

(A) Participate in the design review of any City-owned projects located within the designated Historic District.

(B) Recommend to the City Council the purchase of interests in Property for

purposes of preserving the City's cultural resources.

(C) Investigate and report to the City Council on the Use of Federal, State, local, or private funding sources and mechanisms available to promote the preservation of the City's cultural resources.

(D) Recommend to the Planning Commission and the City Council zoning boundary changes for the district to preserve the historical integrity of the Area. Subdivision, Conditional Uses and planned unit Development Applications must continue to be acted upon by the Planning Commission.

(E) Recommend to the Planning Commission and the City Council changes to the Park City Land Management Code to reinforce the purpose of Historic preservation.

(F) Provide advice and guidance on request of the Property Owner or occupant on the construction, restoration, alteration, decoration, landscaping, or maintenance of any cultural resource, and Property within the Historic District, or neighboring Property within a two (2) block radius of the Historic District.

15-11-7. LIMITATIONS.

The HPB has no authority to waive or increase any requirement of any ordinance of the City.

15-11-8. STAFF ASSISTANCE.

The City may, subject to the approval of the City Manager, provide staff and/or the HPB with such assistance from:

- (A) Utah Heritage Foundation.
- (B) National Trust for Historic Preservation.
- (C) Utah State Division of History.
- (D) Park City Historical Society.
- (E) American Institute of Architects
(AIA)

15-11-9. PRESERVATION POLICY.

It is deemed to be in the interest of the citizens of Park City, as well as the State of Utah, to encourage the preservation of Buildings, Structures, and Sites of Historic Significance in Park City. These Buildings, Structures and Sites are among the City's most important cultural, educational, and economic assets. In order that they are not lost through neglect, Demolition, expansion or change within the City, the preservation of the remaining Buildings, Structures and Site of Historic or community Significance is required based on the level of Significance. This section is intended to provide an incentive for identification and preservation of Historic Buildings, Structures or Sites that may occur within the Park City Historic District, as well as those that may be located outside the Historic District.

15-11-10. HISTORIC DISTRICT DESIGN GUIDELINES.

The HPB shall promulgate and update as necessary Historic District Design Guidelines for Use in the Historic District zones. These guidelines shall, upon adoption by resolution or ordinance by the City Council, be used by the Planning Department staff in reviewing Historic District design review Applications. The Historic District Design Guidelines shall address rehabilitation of existing Structures, additions to existing Structures, and the construction of new Structures. From time to time, the HPB may recommend changes in the Historic District Design Guidelines to the Council, provided that no changes in the guidelines shall take effect until adopted by a resolution of the City Council.

15-11-11. HISTORIC DISTRICT DESIGN REVIEW.

(A) The Planning Department shall review and approve or deny, all Historic District design review Applications associated with a Building Permit to build, locate, construct, remodel, alter or modify any Building, Structure, Site, or other visible element, including but not limited to, signs, lighting fixtures, and Fences located within the Park City Historic District.

- (1) The Owner and/or Applicant for any Property shall be required to submit an Historic District design review Application for proposed work requiring a Building Permit in order to complete the work.

(2) Planning Department staff shall review all Historic District design review Applications, including those associated with an Allowed or Conditional Use, which upon determining compliance with the guidelines, shall be approved by the department staff without HPB review or hearing.

(B) **NOTICE.** Prior to taking action on any Historic District design review Application, the Planning staff shall provide notice pursuant to Section 15-1-20 of this Code.

(C) **DECISION.** Upon taking action on the Application, the Planning Department staff shall make written findings, conclusions of law, and conditions of approval, if any, supporting the decision, and shall provide the Owner and/or Applicant with a copy.

(D) **APPEALS.** The Owner, Applicant, or any Person with standing as defined in Section 15-1-18(D) of this Code may appeal any Planning Department staff decision made on a Historic District design review Application to the Planning Director. All appeal requests shall be submitted to the Planning Department within ten (10) days of the decision. Notice of all pending appeals shall be made by staff, pursuant to Section 15-1-20 of this Code. The scope of review by the Director shall be the same as the scope of review at the staff level.

(1) In those cases, the Director shall either approve, approve with conditions, or disapprove the proposal based on written findings, conclusions of law, and conditions of approval, if any, supporting the decision, and shall provide the Owner and/or Applicant with a copy.

(2) Any Director decision may be appealed to the HPB. Appeal requests shall be submitted to the Planning Department within ten (10) days of the Director's decision. Notice of all pending appeals shall be made by staff pursuant to Section 15-1-20 of this Code. The scope of review by the HPB shall be the same as the scope of review by the Director.

(3) Any HPB decision may be appealed to the Board of Adjustment pursuant to Section 15-10-7 of this Code. Appeal requests shall be submitted to the Planning Department within ten (10) days of the HPB decision. Notice of all pending appeals shall be made by staff, pursuant to Section 15-1-20 of this Code. Appeals shall be considered only on the record made before the HPB.

15-11-12. DETERMINATION OF HISTORICAL SIGNIFICANCE.

The HPB is the official body to review matters concerning the historical designation of Buildings, Structures and Sites within Park City, and to make this information

available to all interested citizens. It is hereby declared that all Buildings, Structures and Sites within Park City, which substantially comply with the standards of review found in Section 15-11-13(A), are determined to be Significant for the purposes of this Chapter.

The Planning Department shall maintain a list of Significant Properties. Any Owner of a Building, Structure or Site may apply for a hearing before the HPB to ascertain Significance of said Property. The Application shall be on forms as prescribed by the City and shall be filed with the Planning Department. Upon receiving an Application for a determination of historical Significance, the Planning staff shall schedule a hearing on the HPB agenda within thirty (30) days. Notice of the hearing shall be posted on the Property and published at least once prior to the hearing. At the hearing, the Applicant shall have an opportunity to present testimony and evidence to demonstrate the historical Significance, or insignificance of the Building, Structure or Site.

(A) **STANDARDS OF REVIEW.** In determining the Historic Significance of the Property at the hearing, the HPB shall evaluate whether the Building, Structure or Site demonstrates a quality of Significance in local, regional, state or national history, architecture, archaeology, engineering or culture, and integrity of location, design, setting, materials, and workmanship according to the following criteria:

(1) The Building, Structure or Site is associated with events or lives

of Persons significant to our past; and/or

(2) The Building, Structure or Site embodies the distinctive characteristics of a type, period or method of construction or that represent the work of a master; and/or

(3) The architectural or historical value or Significance of the Building, Structure or Site contributes to the Historic value of the Property and surrounding Area; and/or

(4) The Building, Structure or Site is at least fifty (50) years old, or has achieved Significance within the past fifty (50) years if the Property is of exceptional importance to the community; and/or

(5) The relation of Historic or architectural features found on the Building, Structure or Site to other such features within the surrounding Area; and/or

(6) Any other factors, including aesthetic, which may be relevant to the historical or architectural aspects of the Building, Structure or Site.

(B) **NOTICE.** Prior to taking action on any determination of historical Significance Application, the Planning staff shall provide public notice pursuant to Section 15-1-20 of this Code.

(C) **DECISION.** If the HPB finds that the Building, Structure or Site is insignificant pursuant to Section 15-11-13(A), it shall immediately be removed from the list, if any, of historically Significant Properties. The HPB shall forward a copy of its written findings to the Owner and/or Applicant.

(D) **APPEAL.** The Applicant or any party participating in the hearing may appeal the HPB decision to the Board of Adjustment pursuant to Section 15-10-7 of this Code. Appeal requests shall be submitted to the Planning Department within ten (10) days of the HPB decision. Notice of all pending appeals shall be made by staff pursuant to Section 15-1-20 of this Code. Appeals shall be considered only on the record made before the HPB.

15-11-13. DEMOLITION AND REMOVAL OF HISTORIC BUILDINGS, STRUCTURES AND SITES.

It is the intent of this and succeeding sections to preserve the Historic and architectural resources of Park City, through limitations on Demolition and removal of Historic Buildings, Structures and Sites to the extent it is economically feasible, practical and necessary. The Demolition or removal of Historic Buildings, Structures and Sites in Park City diminishes the character of the City's Historic District and it is strongly discouraged. Instead, the City recommends and supports preservation,

renovation, adaptive reuse and relocation within the Historic District. It is recognized, however, that Structural deterioration, economic hardship and other factors not entirely within the control of a Property Owner may result in the necessary Demolition or removal of a Historic Building, Structure or Site.

All Applications for Demolition of any Building, Structure, or Site within the City shall be initially reviewed by the Planning staff for Significance pursuant to Section 15-11-13(A) herein, and forwarded with a recommendation for action to the HPB.

(A) **DETERMINATION OF INSIGNIFICANCE.** If upon review, the HPB concludes that the Building, Structure or Site sought to be Demolished or removed is insignificant, the Planning staff may sign-off on the issuance of a Demolition permit.

(B) **DETERMINATION OF SIGNIFICANCE.** If upon review, the HPB concludes that the Building, Structure or Site sought to be Demolished or removed does possess Significance, the Applicant shall be required to submit a CAD Application pursuant to Sections 15-11-15 through 15-11-17, as appropriate.

(C) **REMOVAL OR REPAIR OF HAZARDOUS BUILDINGS.** If, upon review, the Chief Building Official determines the subject Building, Structure or Site to be structurally unsound, and a hazardous or dangerous Building, pursuant to Section 115.1 of the International Building Code, the Chief Building Official may order its removal or repair.

(D) **REQUIREMENT FOR STAY OF DEMOLITION.** In the absence of a finding either of insignificance or of public hazard, the Application for Demolition or removal shall be stayed for 180 days.

15-11-14. CERTIFICATE OF APPROPRIATENESS FOR DEMOLITION (CAD).

With the exception of any Building or Structure falling under the purview of Section 15.1 of the International Building Code or undergoing complete renovation/reconstruction in compliance with this Chapter, no Building, other Structure or Site deemed to be Significant, pursuant to the standards of review set forth in Section 15-11-13(A) herein, may be Demolished or removed without the issuance of a Certificate of Appropriateness *for Demolition* (CAD) by an independent CAD Hearing Board appointed by the City. Application for a CAD shall be made on forms prescribed by the City and shall be submitted to the Planning Department.

15-11-15. PRE-HEARING APPLICATION REQUIREMENTS.

Upon submittal of a CAD Application to the Planning Department, a pre-hearing period of forty-five (45) days shall commence, during which time the Owner shall allow the City to post and sustain a visible sign stating that the Property is "threatened." Said sign shall be at least three feet by two feet (3'X2'), readable from a point of public Access and state that more information may be obtained from the Planning Department for the duration of the stay. In addition, the

Owner shall conduct negotiations with the City for the sale or lease of the Property or take action to facilitate proceedings for the City to acquire the Property under its power of eminent domain, if appropriate and financially possible.

At the end of the forty-five (45) days, the Application will be scheduled for a hearing before the CAD Hearing Board, upon showing that the above requirements have been met and all economic hardship information required has been submitted. The Applicant must also submit fees in accordance with the Park City Municipal fee schedule. The Planning Department staff shall notify the Owner if any additional information is needed to complete the Application.

(A) **CAD HEARING BOARD.** Upon confirmation of receipt of a complete CAD Application, the City shall appoint an independent CAD Hearing Board, consisting of three (3) members, for the purpose of reviewing and taking action upon the Application. The City Manager shall appoint the CAD Board as the need might arise, solely for the purpose of reviewing and taking final action on all CAD Applications.

It is the first priority of the City that the CAD Board has substantial experience in finance, real estate, and commercial business interests. Hence, the Board should possess the following qualifications, or represent the following interests:

- (1) A member appointed at large from Park City with demonstrated

knowledge of economics, accounting and finance;

(2) A member appointed at large from Park City who is an attorney at law; and

(3) A member appointed from the Board of Adjustment.

15-11-16. CAD HEARING.

At the hearing, the CAD Hearing Board will review the Application pursuant to the economic hardship criteria set forth in Section 15-11-17(A) herein, and consider public input. The CAD Hearing Board may only approve Demolition or removal of a Significant Building, Structure or Site if the Owner has presented substantial evidence that demonstrates that unreasonable economic hardship will result from denial of the CAD Application.

(A) **ECONOMIC HARDSHIP CRITERIA.** In order to sustain a claim of unreasonable economic hardship, the Owner shall provide information pertaining to whether the Property is capable of producing a reasonable rate of return for the Owner or incapable of beneficial Use. The City shall adopt by resolution separate standards for investment or income producing and non-income producing Properties, as recommended by the HPB. Non-income Properties shall consist of Owner occupied Single-Family Dwellings and non-income producing institutional Properties. The information required by the City may include, but not be limited to the following:

- (1) Purchase date, price and financing arrangements;
- (2) Current market value;
- (3) Form of ownership;
- (4) Type of occupancy;
- (5) Cost estimates of Demolition and post-Demolition plans;
- (6) Maintenance and operating costs;
- (7) Costs and engineering feasibility of rehabilitation;
- (8) Property tax information; and
- (9) Rental rates and gross income from the Property.

The CAD Hearing Board, upon review of the CAD Application, may request additional information as deemed appropriate.

(B) **CONDUCT OF OWNER EXCLUDED.** Demonstration of economic hardship by the Owner shall not be based on conditions resulting from:

- (1) willful or negligent acts by the Owner; or
- (2) purchasing the Property for substantially more than market value at the time of purchase; or

- (3) failure to perform normal maintenance and repairs; or
- (4) failure to diligently solicit and retain tenants; or
- (5) failure to provide normal tenants improvements.

(D) **DECISION.** The CAD Hearing Board shall make written findings supporting the decision made. The CAD Hearing Board may determine that unreasonable economic hardship exists and approve the issuance of a CAD if one of the following conditions exists:

- (1) For income producing Properties, the Building, Structure or Site cannot be feasibly used or rented at a reasonable rate or return in its present condition or if rehabilitated and denial of the Application would deprive the Owner of all reasonable Use of the Property; or
- (2) For non-income producing Properties, the Building, Structure or Site has no beneficial Use as a residential dwelling or for an institutional Use in its present condition or if rehabilitated, and denial of the Application would deprive the Owner of all reasonable Use of the Property; and
- (3) The Building, Structure or Site cannot be feasibly moved or relocated.

(D) **APPROVAL.** If the CAD Hearing Board approves the Application, the Owner may apply for a Demolition permit with the Building Department and proceed to Demolish the Building, Structure or Site in compliance with other regulations as they may apply. The City may, as a condition of approval, require the Owner to provide documentation of the Demolished Building, Structure or Site according to the standards of the Historic American Building Survey (HABS). Such documentation may include photographs, floor plans, measured drawings, an archeological survey or other information as specified. The City may also require the Owner to incorporate an appropriate memorializing of the Building, Structure or Site, such as a photo display or plaque, into the proposed replacement project of the Property. Approval of a CAD shall be valid for one (1) year.

(E) **DENIAL.** If the CAD Hearing Board denies the Application, the Owner shall not Demolish the Building, Structure or Site, and may not re-apply for a CAD for a period of three (3) years from the date of the CAD Hearing Board's final decision, unless substantial changes in circumstances have occurred other than the re-sale of the Property or those caused by the negligence or intentional acts of the Owner. It shall be the responsibility of the Owner to stabilize and maintain the Property so as not to create a structurally unsound, hazardous, or dangerous Building, as identified in Section 115.1 of the International Building Code. The City may provide the owner with information regarding financial assistance for the necessary rehab or repair work, as it becomes available.

(F) **APPEAL.** The City or any Persons adversely affected by any decision of the CAD Hearing Board may petition the District Court in Summit County for a review of the decision. In the petition, the plaintiff may only allege that the Officer's decision was arbitrary, capricious, or illegal. The petition is barred unless it is filed within thirty (30) days after the date of the CAD Hearing Board's decision.

**PARK CITY MUNICIPAL CODE
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TITLE 15 - LAND MANAGEMENT CODE (LMC)
CHAPTER 12 - PLANNING COMMISSION

Chapter adopted by Ordinance No. 01-17

15-12-1. PLANNING COMMISSION CREATED.

There is hereby created a City Planning Commission to consist of seven (7) members. Members shall be appointed by the Mayor with advice and consent of the Council. Alternate members may also be appointed, which the Mayor may appoint with advice and consent of the Council.

15-12-2. TERMS AND ELIGIBILITY OF MEMBERS.

Members of the Planning Commission shall serve terms of four (4) years. Terms shall be staggered and expire on the second Monday in February. Members shall continue to serve until their successors are appointed and qualified. The Mayor shall appoint a new Planning Commission member to fill vacancies that might arise and such appointments shall be to the end of the vacating member's term. Members of the Planning Commission shall be residents of Park City, and have resided within the City for at least ninety (90) days prior to being appointed. Members are deemed to have

resigned when they move their residences outside the City limits.

15-12-3. GROUNDS FOR REMOVAL.

Any Planning Commission member who is absent from two (2) consecutive regularly scheduled meetings, or a total of four (4) regularly scheduled meetings per calendar year, or who violates Title 3, Ethics, may be called before the City Council and asked to resign or be removed for cause by the Council.

Comment [p1]: (10-9a-301(1)(b)(i))

15-12-4. COMMUNITY REPRESENTATION.

Appointments to the Planning Commission shall be made on a basis which fairly represents the interests of all residents of the community.

15-12-5. AUTHORITY.

The Planning Commission shall have all necessary authority conferred on Planning Commissions pursuant to Chapter 9a of Title 10, Utah Code Annotated, 1953, as amended, and such other powers as are conferred on it by the City Council.

Comment [p2]: Note change

15-12-6. CHAIRMAN.

The Planning Commission shall on or before the second Wednesday in March each year elect a Chairman who shall serve a term of one (1) year, but may be re-elected for one (1) succeeding consecutive term. A Person may not serve more than two (2) consecutive terms as Chairman of the Planning Commission. The Chairman may participate in discussions, but shall have no vote except in case of a tie vote by the members of the Commission.

15-12-7. STAFF.

The Planning Department shall assist the Commission with technical matters. In order to assist the Planning Commission in carrying out its duties, the Planning Commission may request the assistance of other employees or agents of the City.

15-12-8. ALLOWANCE.

The Planning Commission members shall receive an allowance for each meeting attended, as established by the City Council.

15-12-9. PURPOSE.

The Planning Commission shall act as a non-political, long range planning body for the City. Review of specific projects shall be limited to those matters specifically requiring their consideration, and to the monitoring and reviewing of decisions of the Planning Department. The Planning Commission shall review those matters designated in Section 15-12-15 herein.

15-12-10. HEARINGS.

The Planning Commission shall establish procedures for its own hearings governing presentations of projects and public responses, and public impact or comment on specific projects or general issues. Notice for all agenda items pending action shall be according to the Notice Matrix as stated in Section 15-1-21.

15-12-11. MINUTES.

The Planning Commission shall keep official minutes of its meetings, which shall be permanently stored with the City Recorder. All meetings shall comply with Title 52, Chapter 4, Open and Public Meetings, of the Utah Code, as amended.

Deleted: Community Development

Written minutes shall be kept of all Commission meetings. Such minutes shall include:

- (A) The date, time and place of the meeting;
- (B) The names of members present and absent;
- (C) The substance of all matters proposed, discussed, or decided, and a record, by individual member, of votes taken;
- (D) The names of all citizens who appeared and the substance in brief of their testimony; and
- (E) Any other information that any member requests be entered in the minutes.

The minutes are public record and shall be available within a reasonable time after the meeting.

15-12-12. DECISIONS.

All decisions of the Planning Commission shall be included in the minutes. Where written findings are required, the findings may be prepared separately, but shall be incorporated into the minutes.

15-12-13. QUORUM REQUIREMENT.

The Commission shall not conduct any business at a meeting unless a quorum is present. A quorum shall consist of a majority of the appointed members of the Commission, including the Chairman for computation purposes.

15-12-14. VOTING.

Actions of the Commission pass by majority vote. A majority is a simple majority of those members present at the meeting and entitled to vote on the matter under consideration. The vote of the Chairman shall be counted only when he or she votes in order to break a tie vote of the other Commission members. The Commissioner elected Chairman Pro Tem shall, at all times, be entitled to cast his or her vote as a member of the Commission, including those occasions on which he or she is acting as Chairman Pro Tem. Voting to remove an item of business from the consent agenda shall require an affirmative vote of two-thirds of the members present to pass. Other votes shall be a simple majority.

15-12-15. REVIEW BY PLANNING COMMISSION.

(A) General planning and review of specific Development projects by the Planning Commission shall be divided into the following functions:

- (1) City General Plan and General Plan amendments review and recommendation to City Council;
- (2) Annexation review with recommendation to City Council;
- (3) Land Management Code and zoning review with recommendation to City Council;
- (4) Subdivision approval with recommendation to City Council;
- (5) Large scale Master Planned Development approval;
- (6) Conditional Use permit ratification of findings of fact, conclusions of law and conditions of approval, if applicable;
- (7) Consent agenda items;
- (8) Review of appeals of Planning Director's interpretation of the Land Management Code and decisions;
- (9) Subdivision and record of survey plat and plat amendment

Deleted: Community Development

Deleted: Department

review with recommendation to City Council;

(10) Termination of inactive applications; and

(11) Sensitive Lands review

(B) The scope of review for each of these functions is as follows:

(1) **CITY GENERAL PLAN REVIEW.** The Planning Commission shall have the primary responsibility to initiate and update the City's General Plan, including planning for adequate Streets and utilities, parks, trails, recreation facilities, housing, and open space. The Commission shall consider long-range zoning and land use objectives, protection of Sensitive Lands, and shall conduct periodic review of existing plans to keep them current.

(2) **ANNEXATION REVIEW.** The Commission shall review all annexation requests according to the Utah State Code regarding annexations, including Section 10-2-401.5, regarding adoption of an annexation policy plan, and shall make a recommendation to City Council for action. The Commission shall recommend zoning on land to be annexed.

(3) **LAND MANAGEMENT CODE AND ZONING REVIEW.**

The Commission shall initiate or recommend zone changes and review the Land Management Code Development standards within zones. The Commission shall hear all requests for zone changes and forward a recommendation to City Council for action. The Commission shall have the primary responsibility to review amendments to the Land Management Code and shall forward a recommendation to the City Council.

(4) **SUBDIVISION APPROVAL.** The Planning Commission shall review all applications for Subdivisions under the provisions of the Park City Subdivision Control Ordinance in Section 15, Chapter 7.

(5) **LARGE SCALE MASTER PLANNED DEVELOPMENT APPROVAL.** All proposals for large scale Master Planned Development approval shall be reviewed by the Planning Commission. In reviewing requests for large scale Master Planned Development approval, the Commission shall consider the purpose statements and MPD requirements as stated in Section 15-6-1 and Section 15-6-5. All Master Planned Developments shall be processed by the Planning Department and the Planning Commission as outlined in Section 15-6-4.

Deleted: Community Development

(6) RATIFICATION OF CONDITIONAL USE PERMITS.

The Planning Commission has the authority to review and ratify or overturn all actions of the Planning Department regarding Conditional Use permits. In reviewing requests for Conditional Use permits, the Commission shall consider the Conditional Use process and review criteria as stated in Section 15-1-10. In approving or denying a Conditional Use permit the Commission shall ratify and include in the minutes of record the findings of fact, conclusions of law, and conditions of approval, if applicable, upon which the decision to approve or deny was based.

(7) CONSENT AGENDA ITEMS. The following items may be placed on the consent agenda, unless a public hearing is otherwise required, or if a public hearing has already been conducted and has been closed by formal action of the Planning Commission:

- (a) Conditional Use permits, including Steep Slope Conditional Use Permits;
- (b) Plat approvals;
- (c) Requests for time extensions of Conditional Use permit, Master Planned

Development, and plat approvals.

(d) Other items of a perfunctory nature, which the Chairman directs the Department to place on the consent agenda for action.

Deleted: Community Development

All items on the consent agenda shall be passed or denied by a single motion at the Commission meeting, unless a motion to remove a specific item is made. Motions to remove specific items from the consent agenda shall state the reasons for the removal, referring to specific planning issues or Code sections, which the Commissioner making the motion does not think have been satisfactorily resolved or complied with. Motions to remove items from the consent agenda shall be passed by a vote of two-thirds of the Commission members present and voting on the issue. When an item is removed from the consent agenda, it shall be acted on at the same meeting at which the removal occurs, unless the Developer requests the item be tabled in order to prepare additional information to respond to the Commission's concerns.

(8) REVIEW OF APPEALS OF THE PLANNING DIRECTOR'S INTERPRETATION OF THE LAND MANAGEMENT CODE.

At any time, the Owner, Applicant, or any non-Owner with standing as

Deleted: COMMUNITY DEVELOPMENT

Deleted: DEPARTMENT DECISIONS

defined in Section 15-1-18(D) of this Code may request that Staff actions on a project be reviewed by the Planning Commission. The scope of review by the Planning Commission shall be the same as the scope of review at the Staff level.

(9) SUBDIVISION AND RECORD OF SURVEY PLAT AND PLAT AMENDMENT

REVIEW. The Commission shall review all plats affecting land within the City limits or annexations to the City, according to Section 15-7. The scope of review on plat approval is limited to finding substantial compliance with the provisions of the state statute on recording of plats, and that all previously imposed conditions of approval, whether imposed by the Staff or the Commission have been satisfied.

Upon finding that the plat is in compliance with the state statute, and that conditions of approval have been satisfied, the plat must be approved. The City Engineer, City Attorney, City Recorder, City Council, and Mayor shall all review the plat as required by statute before recording. Plats may be approved on the consent agenda.

(10) TERMINATION OF INACTIVE APPLICATIONS. See Termination of Projects, Section 15-1-13.

(11) SENSITIVE LANDS REVIEW. Any project falling within the Sensitive Lands Area Overlay Zone is subject to additional requirements and regulations as outlined in the Sensitive Area Overlay Zone Regulations, Section 15-2.21.

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**PARK CITY MUNICIPAL CODE
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TITLE 15 - LAND MANAGEMENT CODE (LMC)
CHAPTER 14 - ZONING ADMINISTRATION AND ENFORCEMENT

Chapter adopted by Ordinance No. 02-07

CHAPTER 14 - ZONING ADMINISTRATION AND ENFORCEMENT.

15-14-1. ADMINISTRATION AND ENFORCEMENT.

The provisions of this Ordinance shall be administered by the Planning, Engineering, and Building Departments under the supervision of the City Manager, or the Mayor, in the absence of the City Manager. The Planning Director, City Engineer, or Chief Building Official shall, when deemed appropriate, recommend legal action to the City Council in order to enforce this Code or other land Use related ordinances or regulations. The Planning Director, City Engineer, or Chief Building Official, under the supervision of the City Manager or the Mayor, in the absence of the City Manager, shall determine when violations exist, when a Development is in substantial compliance with this Code, or other enforcement actions taken. The failure of any Person to properly interpret or apply this Code or any provision of it shall not operate to waive or estop the City from subsequent enforcement action.

Permits issued in violation of this ordinance shall have no force or effect and Persons knowingly or negligently Building under improperly issued permits do so at their own risk.

15-14-2. OCCUPANCY PERMIT.

Land, Buildings, or premises in any Zoning District shall hereafter be used only for a purpose permitted in such a District and in accordance with the appropriate regulations. A Certificate of Occupancy shall be issued by the Building Official to the effect that the Use, Building, or premises conform to provisions of this and all related ordinances, regulations, and requirements prior to occupancy, for any Building erected, enlarged or altered structurally for the occupancy or Use of any land. Such a certificate is needed whenever Use or character of any Building or land is to be changed.

15-14-3. INSPECTION.

The City, through its designated officials, shall have the right of Access to any premises at any reasonable hour for the purpose of inspecting all Buildings and

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Structures during the course of their construction, modification, or repair; to inspect land Uses to determine compliance with the provisions of this Code; and to make examinations and surveys pertinent to the preparation of the General Plan or preparation or enforcement of this Code.

15-14-4. TIME LIMIT.

Unless there is actual construction and a permit issued within a period of 180 days from the date of plan approval by the Planning, Engineering, and Building Departments, the plan approval for a permitted Use shall expire.

15-14-5. PENALTIES/ ENFORCEMENT.

The provisions of this Code may be enforced by either civil or criminal actions in courts of appropriate and competent jurisdiction. A suit may be brought by the City, or by affected Property Owners, in the manner set forth below:

(A) **CRIMINAL CITATIONS.** The Building Official and other designated City officials may, when there is probable cause to believe that Construction Activity has occurred in violation of this ordinance, issue a citation and swear out criminal complaints against the appropriate individuals and Business entities. Specific approval from the City Council for such misdemeanor citations is not required.

(B) **CIVIL ACTIONS.** The City, with the authorization of the City Council, may bring actions for civil and equitable relief,

including enjoining specific land Uses and affirmative injunctions. The Building Official, Planning Department and other designated City Officials may recommend such actions at any time to the Council, provided that no civil proceeding shall be commenced without the specific authorization of the Council.

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(C) **THIRD PARTY ACTIONS.**

Individuals affected by zoning violations - within Park City shall have the right to maintain private actions to enforce the Code without joining the City as a party.

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15-14-6. VIOLATIONS.

Violations of this Code are Class B misdemeanors, and are punishable by a fine and/or imprisonment described in the current Park City Criminal Code. The officers and directors of a corporation shall be responsible for the acts committed by that corporation. Corporations and individuals shall be responsible for the acts of their agents committed in violation of this ordinance if they had knowledge of the act committed, and the Owner of the Property and improvements made to it. Each day that a violation occurs shall constitute a separate offense.

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PARK CITY MUNICIPAL CORPORATION
PLANNING COMMISSION MEETING MINUTES
COUNCIL CHAMBERS
MARSAC MUNICIPAL BUILDING
APRIL 26 , 2006

COMMISSIONERS IN ATTENDANCE:

Chair Jim Barth, Michael O'Hara, Andrew Volkman, Charlie Wintzer, Diane Zimney

EX OFFICIO:

Patrick Putt, Planning Director; Brooks Robinson, Planner; David Maloney, Planner; Kirsten Whetstone Planner; Jonathan Weidenhamer, Planner; Ray Milliner, Planner; Polly Samuels McLean, Assistant City Attorney; Eric DeHaan, City Engineer

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REGULAR MEETING - 6:30 p.m.

I. ROLL CALL

Chair Barth called the meeting to order at 6:35 p.m. and noted that all Commissioners were present except for Commissioners Thomas and Sletten who were excused.

II. MINUTES

MOTION: Commissioner Wintzer moved to APPROVE the minutes of April 12, 2006. Commissioner Zimney seconded the motion.

VOTE: The motion passed unanimously.

III. PUBLIC COMMUNICATIONS

There was no comment.

IV STAFF & COMMISSIONERS' COMMUNICATIONS

Chair Barth commented on the Lodges at Deer Valley - Silver Baron, and noted that he was asked several times today whether the Planning Commission transferred density from Parcel A. He could not recall transferring density. Planner Brooks Robinson explained that seven units of density was transferred into the Lodges, subject to a recorded instrument from Courchevel, with the creation of the Silver Baron parcel split off from the remaining Lodges Parcels B, C, D, and E. Parcel A was incorporated into the Silver Baron parcel. Planner Robinson stated that initially there were mitigated wetlands on the south end of Silver Baron and no construction was allowed in that area. With a revised Army

MOTION: Commissioner O'Hara moved to CONTINUE these items to May 10, 2006. Commissioner Volkman seconded the motion.

3. Land Management Code - Amendments to the Land Management Code, specifically Chapter 15.

MOTION: Commissioner O'Hara moved to CONTINUE this item to a date uncertain. Commissioner Volkman seconded the motion.

VOTE: The motion passed unanimously.

4. Land Management Code - Amendments to the Land Management Code of Park City; specifically Chapters Chapter 9, Chapter 10, Chapter 11, Chapter 12 and Chapter 14

Planner Kirsten Whetstone reported that this item relates to amendments to Chapters 9, 10, 11, 12 and 14, and an additional amendment to a Section of Chapter 2. The Planning Department is preparing amendments to the Land Management Code to address reorganization that occurred within the Community Development Department, as well as additional substantive revisions that have occurred since the last Land Management Code update in 2000. The Legal Staff also recommended additional amendments based on revisions to the Utah State Code that apply to the Land Management Code.

Planner Whetstone noted that the Staff is in the process of reviewing the entire Land Management Code. A month ago the Planning Commission forwarded a positive recommendation to the City Council on Chapters 1,3,4,6, 7 and 8 and those chapters are going before the City Council tomorrow, April 27th, for public hearing and possible action.

Planner Whetstone reviewed the amendments being discussed this evening. Due to the reorganization City Departments, references to the Community Development Department or the Community Development Director have been replaced with either Planning Department; Planning Director; Planning, Engineering and Building Departments; City Engineer; and/or Chief Building Official. In addition, the Uniform Building Code was changed to International Building Code and the Historic District Commission was changed to the Historic Preservation Board. These changes were made throughout these Chapters.

Planner Whetstone reported on changes to Chapter 9 resulting from revisions to the State Code regarding the abandonment of non-conforming uses associated with demolition, deterioration, or destruction by fire or natural calamity. These changes were outlined in the Staff report.

Planner Whetstone stated that the only changes to Chapters 10 and 11 were those related to the CDD reorganization. She noted that Chapter 12 contained the standard reorganization changes, as well as a revision that allows the Mayor and the City Council to appoint alternate members to the Planning Commission. Chapter 14 contained the standard reorganization changes, as well as a revision to the inspection language that would allow the City to access the premise to make examination and survey pertinent to the Land Management Code and General Plan amendments. She noted that this language is in addition to the allowance already in place for inspection purposes.

Planner Whetstone remarked that the Staff will return with a full redline of Chapter 2, the zoning chapter, as well as Chapter 5, the architectural design chapter, which will be substantively rewritten. Review of Chapter 15 was continued this evening because the Staff is waiting to include all the definitions.

Planner Whetstone stated that Chapter 2 is a revision to Section 15-2.2-3, which is lot and site requirements pertaining to allowable footprints for existing large platted lots within the HR-1 District. She noted that this Chapter pertains to the North Star Subdivision issue. Planner Whetstone remarked that the Land Management Code previously had a maximum floor area formula in which the floor area increased as the lot increased. When the LMC was amended, the maximum floor area was eliminated because it created other problems, and it was replaced with a maximum footprint. This formula was simpler in that you could measure on the ground and it was easier to calculate. Planner Whetstone explained that because the formula has a reverse curve, once you reach a certain point the maximum footprint begins to decrease. In the case of the North Star Subdivision, this formula raises a serious issue and the Staff has been working with the North Star residents on different options.

Planner Whetstone reviewed the options as outlined in the Staff report. Option 1 is to do nothing; Option 2 is to amend the Chapter to exempt all existing platted lots greater than 14,000 square feet from that formula; Option 3 is to amend the Chapter and apply a specific table to lots greater than 14,000 square feet. The proposed table was included in the Staff report. Option 4 is to request that the North Star Subdivision owners submit a request for a plat amendment to add specific notes to the recorded subdivision plat regarding maximum floor area and/or maximum building footprints. Planner Whetstone noted that after further consideration, the Staff determined that this option is not feasible because the requested plat amendment could not be granted in violation of the existing zoning requirements. Option 5 would be to rezone the North Star Subdivision to the SF zone, which would allow very large structures, because there are no floor area or footprint limitations in the SF zone.

The Staff requested that the Planning Commission conduct a public hearing and forward a positive recommendation to the City Council on the revisions to Chapters 9, 10, 11, 12 and 14 and continue the discussion on Chapter 2.2 to May 10th.

Commissioner Volkman wanted to know the current maximum footprint allowed on the existing scale. He was told that the maximum is 3275 square feet for an area equivalent to 8 or 9 Old Town lots. Commissioner Volkman clarified that the proposed table goes as high as 5,000 square feet.

Chair Barth opened the public hearing.

Bill Truxes noted that he had submitted for the record a handout which included a table he had prepared. He stated that Section 15-2.2-3(d) is very onerous for nearly half the owners of the North Star Subdivision and it deprives them of their expectation when they purchased their lot. Mr. Truxes remarked that it appears to give a million dollars to half the neighbors and takes away as much as ten millions dollars from the other half. He requested that the Planning Commission read his letter and pay particular attention to the last column in his table. Mr. Truxes noted that six North Star lots are negatively affected by the maximum floor area formula. He believed someone made a terrible mistake when the Land Management Code was amended and he asked the Planning Commission to reinstate the FAR.

Bob Garda stated that he lives on Lot 7 in the North Star subdivision. He believed that everyone agrees that the 2001 Land Management Code should be modified for North Star. Lots 8, 9, and 10 are going to be built on. One lot will be held to a maximum of 2,000 square feet and the other two are held to 1,000 square feet. Under the current LMC, homes in Old Town with lots of four-tenths of an acre can have a maximum footprint of 3269 square feet. Mr. Garda remarked that currently the six single family homes in North Star are approximately 4200 to 5000 square feet total. The footprints are all under 3,000 square feet at this point. Mr. Garda stated that the proposal is to go back to the 1996 FAR and he questioned whether that is fair. He believed that a 10,000 square foot house with a 3300 square foot maximum footprint makes sense but allowing houses 15,000 to 20,000 square feet is too large given their proximity to Old Town.

Planner Whetstone reported on a telephone conversation she had with Mike Kelly, the owner of Lot 5. Mr. Kelly agrees that this issue needs to be addressed and he wanted to express his opinion that the houses should not be any larger than 10,000 square feet (in floor area).

Chair Barth continued the public hearing on Chapter 15-2.2-3(d).

MOTION: Commissioner Volkman moved to forward a POSITIVE recommendation to the City Council for the amendments on Chapters 9, 10, 11, 12 and 14 according to the Staff report. Commissioner O'Hara seconded the motion.

VOTE: The motion passed unanimously.

Chair Barth called for discussion on Chapter 15-2.2-3(d). He noted that the focus is on one specific subdivision and felt they should stay within conformity with that subdivision. Planner Whetstone clarified that the Staff's intent is to draft language that would apply to any existing large platted lot. Chair Barth wanted to know the specific areas involved if they address this on a broader scale.

Commissioner Wintzer asked if the North Star CC&R's specify house sizes. He was told that the CC&R's only specify the minimum size which is 1800 square feet.

Commissioner Volkman supported the Staff's recommendation and believed it was appropriate. He agreed that the scale of the homes at North Star would impact Old Town and he wanted to see the repercussions for other areas that might be applicable. Planner Whetstone offered to provide that information at the next meeting.

Commissioner O'Hara suggested that they look at a mechanism similar to a CUP on lots larger than a certain size. Commissioner Volkman felt they could adjust the scale to what is being proposed for the maximum at 5,000 and then have it flat line from that point. Chair Barth requested legal input on defensibility.

