

ORDINANCE NO.: 07-08

ADMINISTRATIVE AMENDMENTS

AN ORDINANCE OF WASHINGTON TERRACE CITY, UTAH, AMENDING CHAPTER 2.28 MAKING ADMINISTRATIVE AMENDMENTS FOR LAND USE AUTHORITIES; ADOPTING CHAPTER 2.30 ESTABLISHING RULES OF ETHICAL CONDUCT FOR CITY OFFICIALS; ADOPTING CHAPTER 3.20 CREATING DEVELOPMENT FEE PROVISIONS; SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Washington Terrace City (hereafter “City”) is a municipal corporation, duly organized and existing under the laws of the state of Utah;

WHEREAS, *Utah Code Annotated* §§10-9A-301 requires the City to enact an ordinance establishing a planning commission;

WHEREAS, *Utah Code Annotated* §10-9a-701 requires the City to establish one or more appeal authorities to hear and decide certain matters set forth by law;

WHEREAS, after publication of the required notice the Planning Commission held its public hearing on May 31, 2007, to take public comment on this proposed Ordinance, after which the Planning Commission gave its recommendation to approve this Ordinance;

WHEREAS, the City Council received the recommendation from the Planning Commission and held its public meeting on May 31, 2007, and now desires to act on this Ordinance;

WHEREAS, the City Council desires to comply with the requirements of state law;

NOW, THEREFORE, be it ordained by the City Council of Washington Terrace City as follows:

Section 1: **Repealer.** Any section, part, sentence, phrase, or word in the municipal code that is contrary to this Ordinance is hereby repealed.

Section 2: **Enactment.** The following amendments and new chapters are hereby enacted to read as follows:

Chapter 2.28

~~BOARDS AND COMMISSIONS~~ STATUTORY AUTHORITIES AND AGENCIES

Sections:

2.28.010 ~~Board of Adjustment.~~ Planning Commission.

2.28.020 ~~Planning Commission.~~ Appeal Authority.

2.28.030 Redevelopment Agency.

2.28.010 ~~Board of Adjustment.~~ Planning Commission.

~~There is established the Washington Terrace board of adjustment. The organization of this board and the powers and duties of its members are provided in Utah Code Annotated 10-9-6 through 10-9-18.~~

In accordance with *Utah Code Annotated* §10-9a-301, Washington Terrace City hereby establishes a planning commission as follows:

1. Membership and appointment. The planning commission is composed of seven (7) members who shall be residents and registered voters of Washington Terrace City duly appointed by the mayor with the advice and consent of the city council.
2. Term. Each member of the planning commission shall serve a four (4) year term staggered so that no more than three (3) commissioners expire in a given year.
3. Procedures for filling vacancies and removal from office. Any vacancy in the planning commission membership shall be filled for the remainder of the unexpired term by appointment from the mayor with the advice and consent of the city council. A member of the planning commission may be removed by the mayor for high crimes and misdemeanors, dereliction of duties, failing to attend 70% of the regular planning commission meetings in a given year, for egregious violations of rules of ethical conduct, or for failing to complete required training curriculum as required by the city council.
4. Authority. In addition to any authority delegated or further defined by ordinance, regulation, rule, or policy, the planning commission is vested with all authority set forth in *Utah Code Annotated* §10-9a-302, 1953, as amended.
5. Organization and procedures of the planning commission.
 - a. Unless otherwise provided or designated by law, for all purposes the planning commission shall serve as the land use authority for the municipality.
 - b. The planning commission shall annually elect a chair and vice-chair from its membership.
 - c. Action cannot be taken on an agenda item unless a meeting has been properly notices and the items placed upon the agenda in accordance with law.
 - d. Minutes of each meeting shall be kept and preserved in accordance with law. A copy of the minutes from each meeting shall be provided to the planning commission for approval, correction or amendment, if necessary.
 - e. Each member shall vote on an issue, yea or nay, except when a member declares a conflict of interest or is otherwise excused from the meeting.
 - f. *Robert's Rules of Order*, newly revised, and as applied by the chair, shall govern all meetings as far as such do not conflict with other local or state laws.
 - g. Each member shall abide by the rules of ethical conduct adopted by the city.

6. Compensation. The city council may fix per diem compensation for the members of the planning commission, based on necessary and reasonable expenses and on meetings actually attended and in accordance with the city's travel and training policies.

2.28.020 Planning Commission. Appeal Authority.

~~There is established the Washington Terrace planning commission, composed of seven (7) members. This commission shall perform all functions as set forth in Utah Code Annotated 10-9-4, 10-9-5 and 10-9-19 through 10-9-25. Each member of the planning commission shall serve a four (4) year term, and these terms shall be staggered so that no more than two (2) members' terms will expire each year.~~

In accordance with Utah Code Annotated §10-9a-701, Washington Terrace City hereby establishes an appeal authority as follows:

1. Membership and appointment. The appeal authority is composed of three (3) members who shall be residents and registered voters of Washington Terrace City duly appointed by the mayor with the advice and consent of the city council.
2. Term. Each member of the appeal authority shall serve a four (4) year term staggered so that no more than two (2) members expire in a given year.
3. Procedures for filling vacancies and removal from office. Any vacancy in the membership of the appeal authority shall be filled for the remainder of the unexpired term by appointment from the mayor with the advice and consent of the city council. A member of the appeal authority may be removed by the mayor for high crimes and misdemeanors, dereliction of duties, for egregious violations of rules of ethical conduct, or for failing to complete required training curriculum as required by the city council.
4. Authority. The appeal authority shall:
 - a. Hear and decide variances and appeals of land uses decisions in accordance with Utah Code Annotated §§10-9a-702 and 703.
 - b. Act in a quasi-judicial manner and serve as the final arbiter of issues involving the interpretation or application of land use ordinances.
 - c. Exercise other powers and duties prescribed by law or assignment.
5. Organization and procedures of the appeal authority.
 - a. The appeal authority shall comply with Section 2.28.010(5) of this Chapter.
 - b. The city and the appeal authority shall comply with Utah Code Annotated §10-9a-701(5) regarding its membership.
 - c. No member of the appeal authority shall be a member of the planning commission or serve in any capacity as a land use authority while serving as a member of the appeal authority.
 - d. All references to the Board of Adjustment are hereby amended to read the appeal authority.
 - e. Title 10, Chapter 9a, Part 7 of the Utah Code Annotated shall govern all appeal deadlines, burden of proof, due process, standard of review, and matters of finality. For any appeal of a land use decision to the appeal authority, the deadline set forth by state law is hereby extended to 30 calendar days.

6. District court. No person may challenge in district court any land use decision of the municipality in accordance with state law, or under a regulation made under authority of state law, until that person has complied with *Utah Code Annotated* §10-9a-801, and otherwise exhausted all administrative remedies. In accordance with *Utah Code Annotated* §10-9a-701:
- a. No adversely affected parties shall present a theory of relief in district court that was not first presented to the appeal authority.
 - b. Adversely affected parties are precluded from pursuing duplicate or successive appeals before the same or separate appeal authorities as a condition of the adversely affected party's duty to exhaust administrative remedies.
 - c. The appeal authority may provide that specified types of land use decisions may be appealed directly to the district court.

2.28.030 Redevelopment Agency.

The Washington Terrace city council establishes a redevelopment agency and designates members of the city council as the redevelopment agency of the city, and shall have all the powers and duties as are specified in the ~~Utah neighborhood redevelopment act~~ applicable sections of the *Utah Code Annotated* relating to the same.

Chapter 2.40
RULES OF ETHICAL CONDUCT

Sections:

- 2.40.010. Preamble.**
2.40.020. General provisions.
2.40.030. Conflict of interest.
2.40.040. Gifts and favors.
2.40.050. Treatment of information.
2.40.060. Political activity.

2.40.010. Preamble.

Ethics is defined as the discipline dealing with what is good and bad with moral duty and obligations as a set of moral principles and values. Ethical practice has special relevance to all people who engage in carrying out public responsibilities. Municipal officers must adhere to ethical principles. A code of ethics presents a catalog of temptations that are prohibited, although such cannot be an exhaustive catalog. Human imagination is sufficiently rich to discover new variations of old temptations. The existence of a code simply puts a challenge, to some, to find a gap or loophole. Emphasis must be put, not on the letter of prohibition but, on the spirit of observance of ethical standards.

2.40.020. General provisions.

7. Officers Generally. For all municipal officers, *Utah Code Annotated* § 10-3-1301, et. seq., as amended, is adopted by reference as the rules of ethical conduct for the municipality.
8. Land Use Officers. This chapter specifically applies to the land use officials serving on the planning commission, a designated land use authority, appeal authority, or the city council when acting in a quasi-judicial. Such commissioners, authorities, and councilors are collectively referred to as “land use officials.”

2.40.030. Conflict of interest.

9. Actual conflict. Land use officials to whom private benefits may come as the result of a official action has an actual conflict of interest and should not be a participant in the action, if:
 - a. The private benefit may be direct or indirect.
 - b. The private benefit may create a material personal gain or provide a distinct advantage to relations or friends or to groups and associations which hold some share of a person’s loyalty. Mere membership itself in a group or organization shall not be considered a conflict of interest as to land use action concerning such groups or associations, unless a reasonable person would conclude that such membership in itself would prevent an objective consideration of the matter.
10. Recusal. Land use officials experiencing, in his or her opinion, a conflict of interest should declare his or her interests publicly, and:
 - a. Abstain from voting on the action and excuse himself or herself from the room during consideration of the action.
 - b. Not discuss the matter privately with any other land use official.
11. Action in violation void. The vote of any land use official who has or is determined to have a conflict of interest that was undisclosed or who otherwise fails to disqualify himself or herself shall be void and otherwise disallowed.
12. Apparent conflicts. A conflict of interest may exist under these rules even though a land use official may not believe he or she has an actual conflict. A land use official who has any question as to whether a conflict of interest exists under these rules should raise the matter with the other land use officials in public meeting, or with the city attorney, in order to determine if a conflict of interest exists.
13. Prohibited action. No land use official should engage in any transaction in which he or she has a direct or indirect financial interest with the agency or jurisdiction that he or she serves unless the transaction is disclosed publicly and the transaction is determined to be lawful.

2.40.040. Gifts and favors.

Gifts, favors, or advantages must not be accepted if they are offered because the receiver holds a position of public responsibility. Nothing should be accepted that would be seen as influencing any action that a land use official may take on issues before a public meeting. The value of a gift or advantage and the relation of the giver to the public business should be considered in the determination of accepting or rejecting the gift or favor. Small gifts such as business lunches,

calendars, or office bric-a-brac are often, but not always, acceptable. In case of any doubt, refuse the favor or gift.

2.40.050. Treatment of information.

It is important that a distinction be made between information that belongs to the public and planning information that does not as follows:

14. Reports and official records of a public agency must be open on an equal basis to all inquiries.
15. Information on private affairs that is obtained in the course of performing planning duties must be treated in confidence. Private affairs become public affairs when an official action such as a zoning change or an approval of a plat is requested with respect to them. Only at this time is a disclosure of relevant information proper.
16. Information contained in studies that are in progress in a public agency should not be divulged except in accordance with established policies on the release of such studies.
17. Prearranged private meetings between a land use official, applicants, their agents, or other interested parties are prohibited. This does not include public meetings, city sanctioned field trips, city sponsored design review meetings, or similar city sponsored project management meetings in accordance with the Open and Public Meetings Act.
18. Partisan information or any other relevant information on any application received by a land use official should be made part of the public record.

2.40.060. Political activity.

Membership in a political party and contributions to its finances or activities related to said political party are not required of nor prohibited to any land use official. These are matters of individual decision as follows:

19. The extent of participation in political activities should be governed by professional judgment as well as regulated by any applicable law, ordinance, or regulation.
20. The powers, duties, or responsibilities of any land use official should not be exercised or performed in any way that will create special advantages for a political party.
21. The position of a land use official should not be used to obtain contributions, support, or partisan favors for a political party or any individual thereof.
22. Partisan debate of the city's planning program, process, or plan may be proper, as long as it is constrictive; but it should not be determinative of the action on any quasi-judicial matter before the land use officials.
23. Planning officials should give political parties equal access to information.

Chapter 3.20
DEVELOPMENT FEES

Sections:

- 3.20.010. Development fees.**
3.20.020. Fee and refund policy.

