

## **Chapter 19.03. Land Use Administration and Enforcement.**

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### **19.03.01. Levels of Administrative Review.**

As set forth in this Chapter, there shall be multiple levels of land use development review in the City to accommodate the advisory, recommendation, approval, and appeal processes, as follows:

- 1. Advisory.**
  - a. All proposed land use developments, as impacted under this Title, shall first be reviewed by the Development Review Committee (“DRC”).
  - b. The DRC shall advise the Planning Commission and City Council on all proposed land use developments.
  - c. The DRC is not a public body for purposes of the Utah Open and Public Meetings Act and does not have authority to make final decisions. Rather, the DRC makes recommendations only during informal meetings held by members of City Staff. Meetings held by the DRC are not public meetings and do not require public noticing, written minutes, or audio recordings.
- 2. Recommendation.**
  - a. Except as otherwise specified in this Title, all proposed land use developments, as impacted under this Title, shall be reviewed by the Planning Commission prior to submission to the City Council.

- b. Each proposed development shall receive a Planning Commission recommendation for approval, denial, or modification before being sent to the City Council.
3. **Approval.**
- a. Except as otherwise specified in this Title, all proposed land use developments, as impacted under this Title, shall be reviewed by the City Council for approval.
  - b. Each such proposed development shall receive both preliminary and final approval by the City Council.
  - c. All final approvals by the City Council shall implicitly include a requirement for Engineering, legal, and all other necessary or stipulated signatures on the Final Plat prior to recording.
4. **Appeal.**
- a. All proposed land use development decisions, as impacted under this Title and meeting the requirements of this Title and state statute, shall be entitled to appeal before the Hearing Examiner, upon appropriate application.
  - b. As a condition precedent to judicial review, each adversely affected person shall timely and specifically challenge a land use authority's decision, in accordance with this ordinance.

**19.03.02. Scope.**

The regulations and procedures of this ordinance shall prevail in any conflict between this ordinance and the regulations and procedures of any other ordinance of the City of Saratoga Springs pertaining to the development of property.

**19.03.03. Development Review Committee.**

There is hereby authorized the establishment of a Development Review Committee which is comprised of representatives of the professional staff of the City as appointed by the City Manager. The DRC's membership includes the City Manager, City Engineer, Planning Department, Public Works Director, City Fire Chief, City Building Official, City Attorney, and any other person or agent that the City Manager deems appropriate to function as a member of the Committee

**19.03.04. Powers and Duties of the Development Review Committee.**

It shall be the duty of the Development Review Committee to:

- 1. review all land use applications and matters, ensure development compliance with City Ordinances, and make recommendations to be submitted to the Planning Commission, City Council, or other agencies as necessary to accomplish the purposes of this Title; and
- 2. perform such other duties as are related and assigned.

**19.03.05. Planning Commission Created: Appointment of Members.**

1. There is hereby created a Planning Commission consisting of seven members, appointed by the Mayor with the advice and consent of the City Council, to serve terms of four years and until their successors are appointed and qualified. The terms shall be staggered so that the terms of the members shall expire on different years, when possible, and on December 31 of each year. Any unexpired terms shall be filled for the remainder of the term by the same procedure as original appointment. A member may be removed by the Mayor for cause, but only after a public hearing is first held if such is requested by the member.
2. The Planning Commission shall organize as provided in Utah Code Chapter 10-9a.
3. The Planning Commission members shall not receive a salary or fee for their services but may receive a stipend and be reimbursed for mileage or actual expenses incurred.
4. To carry out its duties, the Planning Commission and staff shall have the powers granted to such by this Title and by Utah Code Chapter 10-9a.
5. The Planning Commission shall adopt written rules of procedure for the conduct of its meetings and the performance of its other duties, which rules shall be subject to approval of the Planning Commission Chair and City Attorney and not be in conflict with state law or the terms of this ordinance.
6. The Planning Commission shall regularly meet to conduct its business according to a schedule of times and at a location set annually by the Planning Commission Chair.
7. From time to time the City Council may establish representative districts within the City from which the Mayor may appoint a resident to serve on the Planning Commission. Such appointments shall be made in conformance with all other sections of this Chapter.

**19.03.06. Powers and Duties of the Planning Commission: Land Use Element of the General Plan.**

1. The Planning Commission shall prepare and recommend a Land Use Element of the General Plan for the City of Saratoga Springs, or amendments thereto, in accordance with relevant sections of Utah Code.
2. The Land Use Element of the General Plan shall be used by the Planning Commission for guidance when making findings on decisions pertaining to Conditional Use permits and in making recommendations on large scale developments, changes to the land use ordinances, or changes to the zoning map.
3. The Planning Commission shall not make any decision or recommendation for approval for any Conditional Use Permit, land use ordinance change, development proposal, or change to the zoning map that without first considering the recommendations in the Land Use Element of the General Plan.

**19.03.07. Powers and Duties of the Planning Commission: Land Use Ordinance.**

1. The Planning Commission may propose a land use ordinance or zoning map for the City of Saratoga Springs, may propose amendments of an existing land use ordinance or zoning map, and may adopt procedures for the proposals to be initiated by its members.
2. The Planning Commission shall consider and give its recommendations on any amendment to the land use ordinance which is proposed by the City Council and submitted to it for approval, denial, or recommendation.
3. Before the Planning Commission proposes any land use ordinance change, it shall comply with the requirements of Chapter 19.17.
4. In considering a proposed amendment to this Title or the City's official Zoning Map, the Planning Commission may submit a recommendation to the City Council for or against the proposal, or it may recommend an alternate amendment.

**19.03.08. Powers and Duties of the Planning Commission: Development Proposals.**

1. The Planning Commission shall take action to recommend to the City Council approval or denial of any land use application in accordance with the terms of land use regulations of the City plus any procedural bylaws the Planning Commission may have adopted under authority in this ordinance.
2. The Planning Commission shall take action to approve or deny a land use application for which powers as the Land Use Authority have been granted in accordance with the terms of land use regulations of the City.
3. The Planning Commission shall follow procedural bylaws as adopted under authority in this ordinance.
4. The Planning Commission shall perform other duties as required under the terms of this ordinance.

**19.03.09. Appeal Authority for Certain Limited Matters; Terms.**

1. For only the actions listed in Section 19.03.12, there is hereby created an Appeal Authority, which shall be composed of a Hearing Examiner who shall be appointed by the Mayor with advice and consent of the City Council.
2. A Hearing Examiner:
  - a. shall act in a quasi-judicial manner and serve as arbiter of issues involving the interpretation or application of land use ordinances;
  - b. may not have a personal or financial interest in the matter being considered;
  - c. may not be a City employee;
  - d. may not live in the City of Saratoga Springs;
  - e. may not entertain an appeal of a matter in which he or she had first acted as the land use authority; and
  - f. shall be administered the oath of office after being appointed and before administering an appeals hearing.

**19.03.10. Hearings Conducted by the Hearing Examiner.**

1. The Hearing Examiner shall conduct hearings, may administer oaths to witnesses, may compel the attendance of witnesses, and may subpoena witnesses, documents, and other evidence. However, the Hearing Examiner may only subpoena witnesses, documents, or other evidence if there is an inadequate record. If written minutes and staff reports with adopted findings and conditions are available, it shall be presumed that there is an adequate record.
2. The City Recorder shall keep minutes of the appeal hearing.
3. The written minutes and records, along with the appeal application, written statements, and other facts bearing on the appeal and decision of the Hearing Examiner, shall be filed in the office of the City Recorder and shall be a public record.
4. The City Recorder shall make an audio recording of the proceedings of the Hearing Examiner and a copy may be requested from the City Recorder in accordance with the City's policies for public records requests.

#### **19.03.11. Powers and Duties of the Hearing Examiner.**

The powers and duties of the Hearing Examiner shall be limited to the following:

1. to hear and decide appeals from a land use decision, requirement, refusal, or other decision made in interpreting and applying the land use ordinance;
2. to hear and decide variances, as defined in state law, from the area, width, setback, or other terms of the land use ordinance, except a use variance shall not be granted; and
3. to act in a quasi-judicial manner and serve as the final arbiter of issues involving the interpretation or application of land use ordinances.

#### **19.03.12. Powers of the Hearing Examiner Limited.**

1. The powers and duties of the Hearing Examiner are limited to those set forth in this Chapter and Title. The Hearing Examiner shall not have the authority to amend this ordinance or to act outside of the authorized rules set forth in Utah Code Chapter 10-9a.
2. No decision shall be made in such a way so as to destroy the intent and purpose of the land use ordinance.
3. The Hearing Examiner's decisions are subject to review only according to the provisions of Utah Code Chapter 10-9a.
4. The Hearing Examiner shall not have authority to hear appeals of legislative decisions made by the City Council including zoning decisions, development agreement approval, land use ordinance amendments, vacation of public streets and rights-of-way, and General Plan amendments.

#### **19.03.13. Requests to Appear Before the Hearing Examiner.**

1. Any adversely affected person or entity wishing to appeal a decision made by the Planning Director, Planning Commission, City Council, or other land use authority in applying the land use ordinance, or to request a variance, may commence such action by submitting a complete application to the Planning Director and paying the applicable filing fees.
2. The Planning Department shall accept and process such forms only if they are properly completed and accompanied by the filing fee in the current amount set by the City Council. To be heard at any meeting of the Hearing Examiner, such forms must be received in proper form with the filing fee properly filed within ten calendar days of the date the contested decision was issued in writing, or it shall be time-barred and not heard.
3. The application shall set forth all allegations of error to the Hearing Examiner. Any allegation not made in the application shall be waived, unless the new allegation was made pursuant to an amended application within the same time limits as the original application. No time periods shall be extended or tolled.
4. The applicant shall bear the burden of proof that an error was made.

**19.03.14. Hearing Examiner Appeal Procedure.**

1. Upon receipt of the request forms, the Planning Director shall forthwith notify the Hearing Examiner, and notice shall also be given as required elsewhere by this ordinance and state law.
2. If the Hearing Examiner finds that the request forms were properly filed and the filing fee paid, the Hearing Examiner shall hold a public hearing within 45 days and take action on the request within 30 days after the hearing.
3. Decisions of the Hearing Examiner shall become effective at the time a written decision is issued.

**19.03.15. Hearing Examiner Appeal Hearing.**

1. The Hearing Examiner shall fix a reasonable time for hearing the appeal. The City Recorder shall provide public notice by publication at least five days prior to the date of the hearing.
2. The intent in requiring a hearing is to enable the Hearing Examiner to obtain facts surrounding the case which may not be evident, or which may not be shown in the written record submitted to the Hearing Examiner.
3. The decision of the Hearing Examiner shall be based upon the facts and not upon expressions of support or protest, or lack of support or protest, which may be made at the hearing.
4. Any party may appear at the hearing in person or through an agent or attorney.

5. All appeal hearings shall be open to the public and shall be recorded.

#### **19.03.16. Action Taken by the Hearing Examiner; Standard of Review for Appeals.**

1. **Review.** An appeal shall be reviewed only when the Hearing Examiner finds that the adversely affected party has complied with and completed all of the forms, procedures, and rules.
2. **Approval.** If an appeal or variance request is approved, the Hearing Examiner shall enter into the official minutes the specific reasons for approval and any conditions or limitations of the approval.
3. **Denial.** If the decision of the Hearing Examiner is to deny an appeal or variance request, the Hearing Examiner shall enter into the official minutes the specific reasons for denial.
4. **Standard of Review.** In determining whether to approve or deny the appeal, the Hearing Examiner shall:
  - a. Presume that the decision is valid;
  - b. Review the record to determine whether the decision was arbitrary, capricious, or illegal; and
  - c. Affirm the decision if it is supported by substantial evidence in the record.

#### **19.03.17. Rules for Hearing and Deciding Appeals.**

When the Hearing Examiner acts under his or her power to hear and decide appeals for authorized matters, the Hearing Examiner shall not grant the reversal or relief appealed for unless it finds that all of the following standards have been met:

1. The appellant has paid the applicable application fee and filed a properly completed application for appeal, which states with specificity the nature of the alleged error and how the appellant has been adversely affected by such alleged error.
2. The application for appeal was properly filed with the Hearing Examiner within 10 calendar days of the decision being appealed.
3. The appellant must have been adversely affected by the subject decision applying the land use ordinance.
4. If the appellant fails to list any allegation of error to the Hearing Examiner, the appellant shall lose all rights to appeal to district court the allegation not made.
5. The decision being appealed must be a decision in applying and interpreting this Title, Chapter 10-9a of the Utah Code, or a land use ordinance of the City of Saratoga Springs.
6. If the Hearing Examiner grants the appellant's request, the decision must be consistent with the provisions of the land use ordinance and not waive or modify any of the terms or requirements thereof.
7. The appellant has the burden of proving that an error was made and must clearly meet that burden based on the facts presented for the record; expressions of support, protest, or other public clamor shall not constitute the basis of approval or denial.

### **19.03.18. Provisions for Hearing and Ruling on Variances.**

1. Any person or entity desiring a waiver or modification of the requirements of a land use ordinance as applied to a parcel of property that he owns, leases, or holds some other beneficial interest in may apply to the Hearing Examiner for a variance from the terms of Title 19.
2. Prior to filing an application for a variance with the Hearing Examiner, the applicant must have applied for a permit, or other land use approval, and have been denied such by the City or land use administrative officer or agency of the City of Saratoga Springs, based on the specific requirement that is the subject of the variance. If there were multiple reasons for denial, the approval of a variance of one requirement shall not relieve the applicant of the need to meet the remaining standards of the ordinance. The requirements of this subsection may be waived by the City Planner after consulting with the City Attorney to determine that the application would be required to be denied if submitted.
3. The Hearing Examiner may not hear a request for a variance unless the applicant has filed a properly completed application and paid the application fee. The application shall contain the following information:
  - a. the normal or standard amount of area, distance, size, or volume required by the land use ordinance;
  - b. the specific amount of variance being requested;
  - c. an explanation of why an unreasonable hardship exists;
  - d. the special circumstances attached to the property that do not generally apply to other properties in the same zone;
  - e. the reasons why granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zone; and
  - f. all other information required by the application form.
4. The substance of the application for a variance must be a request to vary the requirements for height, bulk, width, setback, or other numerical or quantitative, as distinguished from approval to have a land use that is not listed as permitted in a zone. For example, the Hearing Examiner may not grant a “use variance.”
5. The Hearing Examiner may grant a variance only if the requirements of Utah Code § 10-9a-702 are met. The following is that section’s pertinent provisions, which may be amended from time-to-time by the Utah Legislature:
  - a. The Hearing Examiner may grant a variance only if:
    - i. literal enforcement of the ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the City’s land use ordinances;
    - ii. there are special circumstances attached to the property that do not generally apply to other properties in the same zone;
    - iii. granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zone;
    - iv. the variance will not substantially affect the General Plan and will not be contrary to the public interest; and
    - v. the spirit of the land use ordinance is observed and substantial justice done.

- b. In determining whether or not enforcement of the land use ordinance would cause unreasonable hardship under Subsection (5)(a), the Hearing Examiner may not find an unreasonable hardship unless the alleged hardship:
    - i. is located on or associated with the property for which the variance is sought;
    - ii. comes from circumstances peculiar to the property, not from conditions that are general to the neighborhood; and
    - iii. is not self-imposed or economic.
  - c. In determining whether or not there are special circumstances attached to the property under Subsection (5)(a), the Hearing Examiner may find that special circumstances exist only if the special circumstances:
    - i. relate to the hardship complained of; and
    - ii. deprive the property of privileges granted to other properties in the same zone.
  - d. The applicant shall bear the burden of proving that all of the conditions justifying a variance have been met.
  - e. In granting a variance, the Hearing Examiner may impose additional requirements on the applicant that will:
    - i. mitigate any harmful effects of the variance; or
    - ii. serve the purpose of the standard or requirement that is waived or modified.
6. In addition to the requirements of Utah Code § 10-9a-702, the following standards shall apply:
- a. The Hearing Examiner shall not grant a variance greater than the minimum amount necessary to afford relief.
  - b. Variances run with the land.

**19.03.19. Notification and Duration of Approval.**

- 1. Within thirty days after the Hearing Examiner hears an appeal or variance request, the Hearing Examiner shall issue a written decision or order, which may consist of a signed document authored by the Hearing Examiner or the approved written minutes prepared by the City Recorder and signed by the Hearing Examiner. The City Recorder shall mail a copy of the final written decision or order within three days after receipt to the applicant at the address supplied in the application form.
- 2. The decision of the Hearing Examiner shall be deemed final as of the date the written decision or order is dated and signed.
- 3. A variance shall terminate one year from the date of the decision of the Hearing Examiner, unless the Hearing Examiner makes findings that a different date is necessary for substantial justice to be done and sets a different termination date as a condition of approval. Decisions regarding appeals of alleged error shall not have a termination date.

**19.03.20. Recourse from Actions Taken by the Hearing Examiner.**

- 1. Any person adversely affected by any decision of the Hearing Examiner may file a petition with a Court of competent jurisdiction for a review of that decision. Any such appeal or petition shall be barred unless it is filed within 30 days of the date when the

decision becomes final, which is the date said decision is signed and dated by the Examiner. The petition shall be limited to a review of the record to determine whether the decision was arbitrary, capricious, or illegal.

2. The Hearing Examiner shall transmit to the reviewing court the complete record of its proceedings, including applications, exhibits, minutes, findings, and any audio recordings which may be on file with the City Recorder. If there is a record, the review of the Court is limited to the record, and the Court may not accept or consider evidence outside of the record unless it determines that there is an insufficient or inadequate record. If there is no record, the Court may call witnesses and take evidence.
3. The Court shall affirm the decision of the Hearing Examiner if the decision is supported by substantial evidence in the record.
4. Filing a petition for review with the Court does not automatically stay the decision of the Hearing Examiner.
  - a. Before filing the petition for review with the Court, the aggrieved party may petition the Hearing Examiner to stay his or her decision. The Hearing Examiner shall take action on any petition to stay only in a meeting where proper notice was given. Upon considering such petition to stay, the Examiner may grant the stay if it finds such to be in the best interests of the City.
  - b. After filing a petition for review with the Court, the petitioner may seek an injunction staying the decision of the Hearing Examiner.
5. No decision of the Hearing Examiner shall be subject to rehearing by the Examiner, except when remanded from a court of competent jurisdiction.

#### **19.03.21. Power and Duties of the City Council.**

1. The powers and duties of the City Council concerning land use and planning are mainly found in Utah Code Chapter 10-9a and Title 19.
2. This Section and the Utah Code govern the procedures whereby the City Council may adopt or amend the General Plan for the City of Saratoga Springs.
3. The City Council may amend, change, or modify any provisions of the General Plan, land use ordinances, or zoning map provided that:
  - a. the proposed amendment, change, or modification has first been reviewed by the Planning Commission or submitted to it for its recommendations in accordance with Section 3.05.04 and Chapter 19.17 of this Code;
  - b. before taking action, the City Council has first held a public hearing on the proposed amendment; and
  - c. where necessary, the City Council shall amend the General Plan, land use ordinances, or zoning map to ensure consistency.
4. The City Council shall take action to approve or deny Conditional Uses, Preliminary Plats, and Final Plats of development projects by following the land use ordinances of the City. The City Council may from time to time, by resolution, delegate such duties as are deemed appropriate for the efficient and orderly conduct of City business.
5. The City Council shall perform other duties as required under the terms of this ordinance or state law.