

Chapter 2
ORGANIZATION FOR
ADMINISTRATION AND REVIEW

2.1 Planning and Zoning
2.2 Appeal Authorities

2.1. PLANNING AND ZONING

1. CREATION OF PLANNING COMMISSION, NUMBER OF MEMBERS, APPOINTMENT. The Planning and Zoning Commission shall consist of five (5) members, each to be appointed by the Mayor with the advice and consent of the City Council. All five (5) members of said commission shall be residents of East Carbon City and owners of real property within East Carbon City. No members shall hold no other public office within East Carbon City. .

1. The Mayor, upon the advice and consent of the City Council, may appoint up to two standing alternate members of the Planning and Zoning Commission to serve only in the absence of any duly appointed regular member. The alternate shall serve with full rights and authority at the meeting in which he/she is in attendance. The standing alternate(s) shall serve 3 year terms of office and serve consistent will all membership requirements.

2. TERM OF OFFICE. The initial terms of the appointed members of the Planning and Zoning Commission, , shall be three years, and continue until their respective successors shall have been appointed, except that the terms of appointment shall be such that the terms of at least two members shall expire each year. . The Planning and Zoning Commission members existing at the time of passage

of this Ordinance shall continue to serve, and the terms of its members shall be fixed by the City Council in such a manner as to comply with the above provisions for staggering terms of service. There shall be no limit to the number of terms of service so long as service is in good-standing and authorized by the City Council.

3. COMPENSATION. The members of the Planning and Zoning shall serve as such without compensation, except that the City Council may fix per diem compensation for the members of the Planning and Zoning based on necessary and reasonable expenses for meetings actually attended and land use matters reviewed and investigated. Actual expenses, in addition to those within the per diem, incurred shall be verified by presentation of bona fide receipts and vouchers.

1. All Planning and Zoning Commission members and alternate members shall be required to attend annual training on matters relating to the duties of the office and those matters that may be required by state law.

4. VACANCIES AND REMOVALS FOR CAUSE. Vacancies of appointed members occurring otherwise than through the expiration of terms shall be filled for the remainder of the unexpired terms. The City Council shall have the right to remove any member of the Planning and Zoning Commission for misconduct and may remove any member for non-performance of duty. Unexcused absences from 3 consecutive regular scheduled meetings of the Planning and Zoning may be considered by the City Council as non-performance of duty.

5. CHAIRPERSON. The Planning and Zoning shall elect from its members a

chairperson and vice-chairperson who shall serve annually, and, until such time as a new chairperson is elected.

6. EMPLOYEES. The Planning and Zoning Commission shall have power and authority to employ experts and a staff, and to pay such expenses as may be reasonable and necessary for carrying out the powers hereinafter set forth, but not in excess of such sums as may be appropriated by the City Council for use by the Planning and Zoning Commission.

7. RULES AND REGULATIONS. The Planning and Zoning Commission shall adopt such rules and regulations governing its procedures as it may consider necessary or advisable, and shall keep a record of its proceedings, which record shall be open to inspection by the public at all reasonable times. The adopted rules and regulations shall be presented to the City Council for their approval or disapproval. Only after the formal approval of the City Council shall the rules and regulations become enforceable.

8. PLANNING AND ZONING COMMISSION POWERS AND DUTIES.

1. The Planning and Zoning Commission shall:

1. prepare and recommend a General Plan and amendments to the General Plan to the City Council;
2. recommend zoning ordinances and maps, and amendments to zoning ordinances and maps to the City Council;
3. administer provisions of the zoning ordinance, where specifically provided in this Code;

4. recommend subdivision regulations and amendments to those regulations to the City Council;

5. Shall hear and decide approval or denial of subdivision applications on subdivisions fewer than 10 lots, and make recommendations to amendments of subdivision plats, and the vacation of subdivision plats.

6. Shall hear and decide conditional use permits;

7. Shall hear and decide Nonconforming Uses and Non-complying structures

8. advise the City Council on matters as the City Council requests or directs;

9. hear or decide any matters that the City Council designates,

10. exercise any other powers:

1. that are necessary to enable it to perform its function; or
2. delegated to it by the City Council.
3. that are required by State Law including review and recommendation to the East Carbon City Council on matters regarding sale, disposition or transfer of real property owned by East Carbon City.

9. GENERAL PLAN

1. East Carbon City shall prepare and adopt a comprehensive, long range, general plan for:
 1. the present and future needs of East Carbon City; and
 2. the development of the land and growth within East Carbon City.
2. The plan may provide for:
 1. health, general welfare, safety energy conservation, transportation, storm drainage, prosperity, civic activities, and recreation, educational and cultural opportunities;
 2. the reduction of waste of physical, financial, or human resources that result from excessive congestion or excessive scattering of population;
 3. the efficient and economical use, conservation, and production of the supply of food and water, and for drainage, sanitary, and other facilities and resources;
 4. the use of energy conservation and solar and renewable energy resources; and
 5. the protection of urban development, open space and the environment, protection and promotion of air quality.
3. The Planning and Zoning Commission with the approval of the

City Council may determine the comprehensiveness, extent, and format of the general plan.

10. PLAN PREPARATION

1. The Planning and Zoning Commission shall create and recommend to the City Council a proposed general plan for the area within East Carbon City.
 1. The plan may include areas outside the boundaries of East Carbon City if, in the Planning and Zoning's judgment, they are related to the future planning of East Carbon City's territory.
 2. Where the plan of East Carbon City involves territory outside the boundaries of East Carbon City, no action affecting that territory may be taken without the concurrence of the county unincorporated areas or other municipalities affected.
2. The general plan, with accompanying maps, plats, charts and descriptive and explanatory information, shall show the Planning and Zoning's recommendations for the development of the territory covered by the plan, and may include, among other things:
 1. A land use element that designates the proposed general distribution and location and extent of uses of land for housing, business, industry, agriculture, recreation, education, public buildings

and grounds, open space, and other categories of public and private uses of land as appropriate; and may include a statement of the standards of population density and building intensity recommended for the various land use categories covered by the plan;

2. A transportation and circulation element consisting of the general location and extent of existing and proposed freeways, arterial and collector streets, mass transit, and any other modes of transportation that are appropriate, all correlated with the land use element of the plan;

3. An environmental element that addresses:

1. the protection, conservation, development and use of natural resources, including forests, soils, rivers and other waters, harbors, fisheries, wildlife, quality of air, minerals, and other natural resources, hazards; and
2. the reclamation of land, storm water management, flood control, prevention and control of the pollution of streams and other waters, regulation of the use of land on hillsides, stream channels and other environmentally sensitive areas, the prevention, control and correction of the erosion of soils, protection of watersheds and wetlands, and the mapping of known geologic hazards;

4. A public service and facility element showing general plans for sewage, water disposal, drainage, local utilities, rights-of-way, easements, facilities for them, police and fire protection, and other public services.

5. A rehabilitation, redevelopment, and conservation element consisting of plans and programs for the elimination of blight and for redevelopment, including housing sites, business and industrial sites, public building sites, and historic preservation;

6. An economic element composed of appropriate studies and an economic development plan that may include review of municipal revenue and expenditures, revenue sources, identification of base and resident industry, primary and secondary market areas, employment, and retail sales activity;

7. Recommendations for implementing the plan, including the use of zoning ordinances, subdivision ordinances, capital improvement plans, and other appropriate actions; and

8. Any other elements that East Carbon City considers appropriate.

11. PLAN ADOPTION

1. After completing a proposed general plan for all or part of the area within East Carbon City, the Planning and Zoning Commission shall schedule and hold a public hearing on the proposed plan in compliance with State law, after a minimum of 10 44 days notice.

1. After the public hearing, the Planning and Zoning may make changes to the proposed general plan.

2. The Planning and Zoning shall then forward the proposed general plan to the City Council.

3. The City Council shall hold a public hearing, after 10 days notice, on the proposed general plan recommended to it by the Planning and Zoning.

1. After the public hearing, the City Council may make any modifications to the proposed general plan that it considers appropriate.

4. The City Council may:

1. adopt the proposed general plan without amendment;

2. amend the proposed general plan and adopt or reject it as amended; or

3. reject the proposed general plan.

5. The general plan is an advisory guide for land use decisions, and compliance can be mandated by ordinance.

12. AMENDMENT OF PLAN

1. The City Council may amend the general plan by following the procedures set forth in subsection 2.1.11.4., above.

13. EFFECT OF THE PLAN ON PUBLIC USES.

1. After the City Council has adopted a general plan or any amendments to the general plan, no street, park or other public way, ground, place or space, no publicly owned building or structure, or utility, whether publicly owned or privately owned, may be constructed or authorized until and unless:

1. it conforms to the plan; or

2. it has been considered by the Planning and Zoning Commission and, after receiving the advice of the Planning and Zoning, approved by the City Council as an amendment to the general plan.

2. Before accepting, widening, removing, extending, relocating, narrowing, vacating, abandoning, changing the use, acquiring land for, or selling or leasing any street or other public way, ground, place, property, or structure, the City Council shall submit the proposal to the Planning and Zoning Commission for its review and recommendations.

1. If the City Council approves any of the items contained in subsection 2.1.13.2, above, it

shall also amend the general plan.

14. ZONING – RIGHT TO REGULATE.

1. The City Council may enact a zoning ordinance establishing regulations for land use and development that furthers the intent of this chapter.

15. PREPARATION AND ADOPTION OF ZONING REGULATIONS.

1. The Planning and Zoning Commission shall prepare and recommend to the City Council a proposed zoning ordinance, including both the full text of the zoning ordinance and maps, which represent the Commission’s recommendations for zoning all or any part of the area within East Carbon City.
2. The City Council shall hold a public hearing on the proposed zoning ordinance recommended to it by the Planning and Zoning Commission.
 1. The City Council shall publish notice of the time, place, purpose of the public hearing in a newspaper of general circulation in East Carbon City at least 10 days before the hearing at which the proposed zoning ordinance is to be considered and public comment heard.
3. After public hearing the City Council may:
 1. adopt the zoning ordinance as proposed, or
 2. amend the zoning ordinance and adopt or reject

the zoning ordinance as amended; or

3. reject the ordinance.

16. AMENDMENTS AND REZONING.

1. The City Council may amend:
 1. the number, shape, boundaries, or area of any zoning district;
 2. any regulation of or within the zoning district; or
 3. any other provision of the zoning ordinance.
2. The City Council may not make any amendment authorized by this subsection unless the amendment was proposed by the Planning and Zoning or is first submitted to the Planning and Zoning for its approval, disapproval, or recommendations. The City Council shall comply with the procedure specified in Section 2.1.15 of this chapter, in preparing and adopting an amendment to the zoning ordinance or zoning map.

17. TEMPORARY REGULATIONS.

1. The City Council may, without a public hearing, enact ordinances establishing temporary zoning regulations for any part or all of the area within East Carbon City.
 1. Those temporary zoning regulations may prohibit or regulate the erection, construction, reconstruction, or alteration of any building or structure or subdivision approval.

2. The City Council shall establish a period of limited effect for the ordinances not to exceed six months from the date of enactment.

3. There shall be no claim for damages based on a temporary moratorium under this section.

18. ZONING DISTRICTS.

1. The City Council may divide the territory over which it has jurisdiction into zoning districts of a number, shape, and area that it considers appropriate to carry out the purposes of this chapter.

19. CONDITIONAL USES.

1. A zoning ordinance may contain provisions for conditional uses that may be allowed, allowed with conditions, or denied in designated zoning districts, based on compliance with standards and criteria set forth in the zoning ordinance for those uses.

2. The Appeal Authority Appeal Authority has jurisdiction to decide appeals of the approval or denial of conditional use permits.

20. NON-COMPLYING USES AND STRUCTURES.

1. Except as provided in this section, a non-conforming use or structure may be continued.

1. A non-complying use may be extended through the same building, provided no structural alteration of the building is proposed or made for the purpose of the extension.

2. For purposes of this subsection, the addition

of a solar energy device to a building is not a structural alteration.

2. The Planning Commission may provide in any zoning ordinance or amendment thereto for:

1. the restoration, reconstruction, extension, alteration, expansion, or substitution of non-conforming uses upon the terms and conditions set forth in the zoning ordinance;

2. the termination of all non-complying uses (except billboards) by providing a formula establishing a reasonable time period during which the owner can recover or amortize the amount of his investment in the non-conforming use, if any; and

3. the termination of a billboard that is a non-complying use by either:

1. acquiring the billboard and associated property rights by gift, purchase, agreement, exchange, or eminent domain, provided that if the City Council acquires the billboard by eminent domain, it pays the owner just compensation; or

2. allows the owner to recover or amortize the fair market value, in an amount that is equal to the amount by condemnation, and takes into consideration the reasonable cost of operation to the owner over the amortized period.

3. Notwithstanding Subsection 2.1.20.2, a legislative body may remove a billboard without providing compensation or amortization if, after providing the owner with reasonable notice of proceedings and an opportunity for a hearing, the City Council finds that:

1. the applicant for a permit made a false or misleading statement in his application;
2. the billboard is unsafe; or
3. the billboard is an unreasonable state of repair; or
4. the billboard has been abandoned for at least 12 months.

2.2. APPEAL AUTHORITIES

1. APPEAL AUTHORITY

1. In order to provide for just and fair treatment in the administration of local zoning ordinances, and to insure that substantial justice is done, East Carbon City shall appoint a Appeal Authority or Authorities Appeal Authority to exercise the powers and duties provided in this part.

2. ORGANIZATION AND PROCEDURES

1. The Appeal Authority shall:

1. adopt rules that comply with any ordinance adopted by the City Council.

2. All meetings of the Appeal Authority shall be open to the public.

2.The Appeal Authority shall:

1. keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote, indicating that fact; and

2. keep records of its examinations and other official actions.

3. All records in the office of the Appeal Authority are public records.

4. Decisions of the Appeal Authority Appeal Authority become effective at the meeting in which the decision is made, unless a different time is designated in the Appeal Authorities rules or at the time the decision is made.

3. The City Council may fix per diem compensation for the members of the Appeal Authority Appeal Authority based on necessary and reasonable expenses and on meetings actually attended.

4. POWERS AND DUTIES.

1. The Appeal Authority Appeal Authority shall hear and decide:

1. appeals from administrative decisions applying a zoning or subdivision ordinance and the Land Use Development and Management Code, including appeals from:

1. building permit denials based upon a failure to comply with a zoning or subdivision ordinance;

2. administrative decisions related to subdivision plats

2. variances, as stated below.

5. APPEALS.

1. The applicant or any other person or entity adversely affected by a decision administering or

interpreting a zoning ordinance may appeal that decision applying the zoning ordinance by alleging that there is error in any order, requirement, decision, or determination made by an official in the administration, interpretation, or enforcement of the Land Use Development and Management Code.

1. The City Council shall enact an ordinance establishing a reasonable time for appeal to the Appeal Authority Appeal Authority of decisions administering or interpreting the Land Use Development and Management Code.
 2. Any officer, department, board, or bureau of East Carbon City affected by the grant, or refusal of a building permit or by any other decisions of the Zoning Administrator in the enforcement and administration of the Land Use Development and Management Code may appeal any decision to the Appeal Authority.
 3. The Appeal Authority shall hear and decide appeals from the Planning and Zoning decisions regarding conditional use permits
 4. The person or entity making the appeal has the burden of proving that an error has been made.
 5. Only zoning decisions applying the ordinance may be appealed to the Appeal Authority.
2. A person may not appeal, and the Appeal Authority Appeal Authority may not consider, any Land Use Development and Management Code amendments.
1. Appeals may not be used to waive or modify the terms or

requirements of the Land Use Development and Management Code.

6. VARIANCES.

1. Any person or entity desiring a waiver or modification of the requirements of the Land Use Development and Management Code as applied to a parcel of property that he/she owns, leases, or in which he/she holds some other beneficial interest, may apply to the Appeal Authority for a variance from the terms of the Land Use Development and Management Code. Applicants appealing to the Appeal Authority shall provide written notification to neighboring property owners within three-hundred feet (300') of the subject property of the variance, at the direction of the Zoning Administrator, if required.
2. The Appeal Authority may grant a variance only if:
 1. literal enforcement of the Code would cause a hardship for the applicant that is not necessary to carry out the general purpose of the Code;
 2. there are special circumstances attached to the property that do not generally apply to other properties in the same district;
 3. granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same district;
 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 Code is observed and substantial justice done.
6. In determining whether or not enforcement of the Code would cause hardship, the Appeal Authority may not find an unreasonable hardship unless:
 1. the alleged hardship is located on or associated with property for which the variance is sought; and
 2. the alleged hardship comes from circumstances peculiar to the property, not from conditions that are general in the neighborhood.
3. In determining whether or not enforcement of the Code would cause unreasonable hardship under Section 2.8.1., the Appeal Authority may not find an unreasonable hardship if the hardship is self-imposed or economic.
7. The applicant shall bear the burden of proving that all of the conditions justifying a variance have been met.
8. Variances run with the land.
9. The Appeal Authority and any other body may not grant use variances.
10. In granting a variance, the Appeal Authority may impose additional conditions or requirements on the land use that will:
 1. mitigate any harmful effects of the variance; or
 2. serve the purpose of the standard or requirement that is waived or modified.

7. APPEAL OF APPEAL AUTHORITY APPEAL AUTHORITY DECISION TO DISTRICT COURT
 1. Any person adversely affected by any decision of a Appeal Authority may petition the District Court in and for Carbon County, Utah for a review of the decision.
 1. In the petition, the plaintiff may only allege that the Appeal Authority's decision was arbitrary, capricious, or illegal.
 2. The petition is barred unless it is filed within 30 days after the Appeal Authority's decision is final.
 3. The Appeal Authority shall transmit to the reviewing court the record of its proceedings including its minutes, findings, orders and, if available, a true and correct transcript of its proceedings.
 2. If the proceeding was taped, a transcript of that tape proceeding is a true and correct transcript for purposes of this subsection.
 1. If there is a record, the district court's review is limited to the record provided by the Appeal Authority.
 2. The court may not accept or consider any evidence outside the Appeal Authority's record unless that evidence was offered to the Appeal Authority and the court determines that it was improperly excluded by the Appeal Authority.
 3. If there is no record, the court may call witnesses and take evidence.
 1. The court shall affirm the decision of the Appeal Authority if

the decision is supported by substantial evidence in the record.

2. The filing of a petition does not stay the decision of the Appeal Authority.

4. Before filing the petition, the aggrieved party may petition the Appeal Authority to stay its decision.

5. Upon receipt of a petition to stay, the Appeal Authority may order its decision stayed pending District Court review if the Appeal Authority finds it is in the best interest of the municipality.

1. After the petition is filed the petitioner may seek an injunction staying the Appeal Authority's decision.

8. APPEALS

1. No persons may challenge in District Court a municipality's land use decision made under this chapter or under the regulation made under authority of this chapter or this Code until they have exhausted their administrative remedies.

1. Any person adversely affected by any decision made in the exercise of the provisions of this chapter may file a petition for review of the decision with the District Court within 30 days after the local decision is rendered.

2. The District Court shall:

1. presume that land use decisions and regulations are valid; and

2. determine only whether or not the decision is arbitrary, capricious, or illegal.

9. ENFORCEMENT

1. A municipality or any owner of real estate within the municipality in which violations of this chapter or ordinances enacted under the authority of this chapter occur or are about to occur may, in addition to other remedies provided by law, institute: 1. injunctions, mandamus, abatement, or any other appropriate actions; or

1. proceedings to prevent, enjoin, abate, or remove the unlawful building, use, or act.

2. A municipality need only establish the violation to obtain the injunction.

3. A municipality may enforce the ordinance by withholding building permits.

1. It is unlawful to erect, construct, reconstruct, alter, or change the use of any building or other structure within a municipality without approval of a building permit.

2. The municipality may not issue a building permit unless plans of and for the proposed erection, construction, reconstruction, alteration, or use fully conform to all regulations then in effect.

10. PENALTIES

1. The City Council may, by ordinance, establish civil penalties for violations of any of the provisions of this chapter or of any ordinances adopted under authority of this chapter.

2. Violation of any of the provisions of this chapter or of any ordinances adopted under the authority of this chapter are punishable as a Class C misdemeanor upon conviction either;

1. as a Class C misdemeanor; or

by imposing the appropriate civil penalty adopted under authority of this section.