

GENERAL PROVISIONS and PROCEDURES

This Chapter describes the General Rules and Regulations necessary to effectively administer the Land Management and Development Code of the Town of Bear River City. Procedures for permitted use and conditional use applicants are defined. Code and Zoning amendments, as well as appeal procedures and non-conforming uses are explained in detail. The infrastructure impact review process is also emphasized throughout the permitting procedure. Other important procedures and provisions are defined in this chapter as well.

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1.1 Short Title

This ordinance shall be known as the Bear River City Land Management and Development Code, and is referred to herein as this Code, or just the Land Management Code or the Development Code or the Code.

1.2 Statement of Purpose

After considerable public input and several public hearings over a period of three years, this Code was developed, designed and enacted to implement the goals and objectives of Bear River City’s 1997 General Plan, a document designed to protect its special rural, agricultural quality of life. More generally, the following goals and objectives define the major purposes of this Code:

- (a) To promote the health, safety, convenience and general welfare of the present and future inhabitants of the community.
- (b) To encourage and facilitate the orderly growth and development of the community and to implement the goals and policies of the Town General Plan.
- (c) To provide adequate open space for light, air, agriculture and environment; to prevent overcrowding of the land and to minimize congestion on the streets.
- (d) To secure economy in municipal expenditures and to encourage adequate provisions for transportation, water, sewage, schools, public safety, parks and other public facilities and services .
- (e) To increase the security of home life and to preserve a more favorable environment for the citizens and visitors of the community.
- (f) To ensure safety from fire and other man-made or natural dangers.
- (g) To stabilize and protect property values and to place compatible uses together in the community.
- (h) To enhance the economic and cultural well-being of the inhabitants of the community.
- (i) To promote the development of a more wholesome, serviceable and attractive community resulting from an orderly, planned use of resources.
- (j) To establish proper zoning regulations; to ensure the suitability of the land for particular uses, and to conserve the value of buildings and encourage the most appropriate use of land throughout the community.
- (k) To preserve the rural, agricultural quality of life enjoyed by the residents of Bear River City. (i.e., wide streets, maintained city irrigation system, livestock animals permitted, home based animal & food production, processing, and storage)
- (l) To further the purpose of this Code and to promote the objectives and qualities of the respective zones.

It is the intention of the Town in adopting this Code to fully exercise all of the powers granted to the Town by the provisions of the Utah Zoning Enabling Act, Section 10-9-1 et seq. Utah Code Annotated, 1953, as amended, and all other powers granted by statute or

by common law for the regulation of land uses and improvements. The intention of the Town is to assure the managed, proper and sensitive/critical development of land within Bear River City and to protect and enhance the quality of rural life in general. The Code is intended to allow development in a manner that encourages the preservation of scenic values, historic structures, the unique agricultural setting of Bear River City , and provide for well-planned commercial and residential centers, smooth traffic circulation, and efficient delivery of municipal services. The Code seeks to prevent development impacted by existing geologic hazards, erosion, flooding, or other conditions that create potential dangers to life and safety in the community, or development that influences critical wildlife habitats, or developments that detract from the rural quality of life in the community.

1.3 Conflict

The provisions of this Code are in addition to all other Town ordinances, the Laws of the State of Utah, the Laws of the United States, and applicable common law. This Code shall not supersede any private land use regulations in deeds or covenants which are more restrictive than this Code. Whenever a conflict exists, the more restrictive provision shall be applied to the town to the extent allowed by law.

1.4 Effect on Previous Ordinances and Maps

The existing zoning ordinances of Bear River City, including the official zoning maps adopted with those ordinances, are hereby amended in their entirety to conform to the provisions of this Code, providing that this Code is a continuation of those existing ordinances, and not a new enactment, in so far as the substance of the old and new provisions are the same. This Code shall not be construed as affecting the term of office of any board or commission member appointed under the prior enactment. Structures built and/or uses established prior to the adoption of this ordinance, or for which building permits were issued and on which work commences as required under the permit shall, to the extent they do not conform to this ordinance, be considered as noncomplying structures and/or nonconforming uses, and shall not be affected hereby. Uses which were nonconforming under the old enactments shall not be affected by this Code, unless the Code is changed in a manner that makes the use conforming to the new code or zone.

1.5 Amendments to the Land Management Code and Zoning Map

It may become desirable from time to time to amend the provisions of this Code or the zoning map. This code should be constantly reviewed and improved upon to stay viable and useful to the Town. All amendments shall be made in the following manner:

1.5.1 Amendments

Amendments to the provisions of the Code may be made by the Planning Commission and City Council, as originated in either body (although normally originated by the Planning Commission), from time to time following notice requirements outlined in Chapter 1.6 of this Code. A public hearing must be held by the Planning Commission and the proposed changes then must be recommended to the City Council for their action. At a City Council meeting which as been properly noticed, the amendment(s), as proposed, amended and/or rejected may be adopted on the day of the public meeting or at any time after, provided that they are adopted at a properly noticed public meeting of the City Council.

1.5.2 Types of Amendments

The types and nature of Amendments that may be made are classified as follows:

- (a) allowing a use previously prohibited
- (b) prohibiting a use previously allowed
- (c) increasing or decreasing the density of the uses previously allowed
- (d) changing the zone of any property
- (e) procedural or regulatory changes, both minor or major
- (f) zone map amendments or modifications
- (g) repealing of any regulation or procedure
- (h) adding of any regulation or procedure
- (i) any other miscellaneous changes that may become necessary

1.5.3 *Petition for Zone Change or Code Amendment*

Apetition to change the zone of any land within Bear River City or to amend this Code other than changing the Zone map, shall be filed first with the Zoning Administrator in a letter or on a form prescribed for that purpose. The form or letter shall contain a legal description of the land affected by the petition, and a statement of the petitioner’s interest in the land included within the petition. The petition shall state the current zone of the property and the land area for which the petitioners desire to have a new zone designation established, the petition shall so state, and give some indication of the reasoning for the change as well as the uses and standards requested to be allowed in the new zone. A fee will be established for acting on a petition for a zone change as described in the current City Fee Schedule Resolution in effect at the time.

1.5.4 *Hearings before the Planning Commission*

The Planning Commission shall hold a public hearing on all petitions for zone changes and receive comments from citizens or property owners affected by the change. The Commission shall also hold a public hearing on other amendments to the Land Management and Development Code. Notice of all zone change hearings before the Planning Commission shall be given as set forth in Section 1.6 of this Code. The notice shall state generally the nature of the proposed amendment as outlined in 1.5.2 and the land affected, and the time, place, and date of the public hearing. The notice shall also state that more detailed information shall be available for public inspection at the Town Clerks Office, or other specified location at the time the notice is published.

1.5.5 *Action by Planning Commission*

Following the hearing, the Planning Commission shall adopt formal recommendations to be presented to the City Council regarding the matter before it, approving, disapproving or modifying the proposal. The Planning Commission shall act on the proposal at the next regularly scheduled meeting following the hearing, unless the proponent or petitioner has requested the matter be tabled for further consideration, or the petition is withdrawn. If the Commission fails to act within two (2) regularly scheduled meetings on the proposal, the proposal shall be deemed disapproved by the Planning Commission and the proposal shall be forwarded to the City Council for their consideration with that recommendation.

1.6 Notices

Notice of hearings before the Town Council, Planning Commission and Appeal Authority concerning amendments to the General Plan, zoning and zone changes, amendments to the Land Management and Development Code shall be provided in accordance with this section. Notice of amendments to the General Plan, this Code and zoning actions shall be given at least ten (10) days before the date set for the hearing. All other notice required herein shall be given at least ten (10) days before the date set for hearing, if a hearing is

required under this code. All notice required under this section shall be given as follows:

1.6.1 Posted Notice

Notices of public meetings before the City Council, Planning Commission, Appeal Authority, and other public bodies shall include the date, time, place, and agenda of the meeting. The agenda shall provide reasonable specificity as to the topics to be considered at the meeting. Public meeting notices shall be:

1. Posted at least 24 hours before the meeting; and
2. Posted in at least three public locations within the municipality or on the municipality's official website; and
3. Posted on the Official State of Utah Notice website.

1.6.2 Notices of public hearings before the City Council, Planning Commission and Appeal Authority shall include the date, time, place, and nature of the meeting and shall be:

1. Published in a newspaper of general circulation in the Bear River City area at least ten (10) calendar days before the date set for the hearing. The ten (10) day requirement does not include the day of notice or the day of the hearing or meeting. The published date of the notice, not the date of submittal to the newspaper must meet any notification timing requirements designated in this Code for the meeting; and
2. Posted in at least three public locations within Bear River City or posted on the city's official website; and
3. Mailed when required.

1.6.2 a) Public hearings shall be required for, but are not limited to the following:

- (i) Annexation Policy Plan or Application
- (ii) Appeal Authority application
- (iii) Conditional Use permit application
- (iv) General Plan adoption or modification
- (v) Land Management & Development Code adoption or modification
- (vi) Nonconforming Uses and Noncomplying Structures
- (vii) Platted Street amendment or application
- (viii) Zoning and zone change or application for a change

1.6.3 Notice of Public Hearings and Public Meetings to Consider General Plan or Modifications(10-9a-204)

- (1) Bear River City shall provide:
 - (a) notice of the date, time, and place of the first public hearing to consider the original adoption or any modification of all or any portion of a general plan; and
 - (b) notice of each public meeting on the subject.
- (2) Each notice of a public hearing under Subsection (1)(a) shall be at least 10 calendar days before the public hearing and shall be:
 - (a) published on the Utah Public Notice Website created in Section 63A-16-601;
 - (b) mailed to each affected entity; and
 - (c) posted:
 - (i) in at least three public locations within the municipality; or

- (ii) on the municipality's official website.
- (3) Each notice of a public meeting under Subsection (1)(b) shall be at least 24 hours before the meeting and shall be:
 - (a) published on the Utah Public Notice Website created in Section 63A-16-601; and
 - (b) posted:
 - (i) in at least three public locations within the municipality; or
 - (ii) on the municipality's official website.

1.6.4 Notice of public hearings and public meetings on adoption or modification of land use regulation. (10-9a-205)

- (1) Bear River City shall give:
 - (a) notice of the date, time, and place of the first public hearing to consider the adoption or any modification of a land use regulation; and
 - (b) notice of each public meeting on the subject.
- (2) Each notice of a public hearing under Subsection (1)(a) shall be:
 - (a) mailed to each affected entity at least 10 calendar days before the public hearing;
 - (b) posted:
 - (i) in at least three public locations within the municipality; or
 - (ii) on the municipality's official website; and
 - (iii) posted on the Utah Public Notice Website at least 10 calendar days before the public hearing; or
 - (iv) mailed at least 10 days before the public hearing to:
 - (A) each property owner whose land is directly affected by the land use ordinance change; and
 - (B) each adjacent property owner within the parameters specified by municipal ordinance.
- (3) Each notice of a public meeting under Subsection (1)(b) shall be posted at least 24 hours before the meeting:
 - (a) in at least three public locations within the municipality; or
 - (b) on the municipality's official website.
- (4) Notice of Zoning Map Adoption or Amendment
 - (a) Bear River City shall send a courtesy notice to each owner of private real property whose property is located entirely or partially within a proposed zoning map enactment or amendment at least 10 days before the scheduled day of the public hearing.
 - (b) The notice shall:
 - (i) identify with specificity each owner of record of real property that will be affected by the proposed zoning map or map amendments;
 - (ii) state the current zone in which the real property is located;
 - (iii) state the proposed new zone for the real property;
 - (iv) provide information regarding or a reference to the proposed regulations, prohibitions, and permitted uses that the property will

- be subject to if the zoning map or map amendment is adopted;
- (v) state that the owner of real property may no later than 10 days after the day of the first public hearing file a written objection to the inclusion of the owner's property in the proposed zoning map or map amendment;
- (vi) state the address where the property owner should file the protest;
- (vii) notify the property owner that each written objection filed with the municipality will be provided to the municipal legislative body; and
- (viii) state the location, date, and time of the public hearing described in Section 10-9a-502.

(c) If a Bear River City mails notice to a property owner in accordance with Subsection (2)(b)(iv) for a public hearing on a zoning map or map amendment, the notice required in this Subsection (4) may be included in or part of the notice described in Subsection (2)(b)(iv) rather than sent separately.

1.6.5 *Notice for an amendment to a subdivision -- Notice for vacation of or change to street. (10-9a-207)*

- (1)
 - (a) For an amendment to a subdivision, each municipality shall provide notice of the date, time, and place of at least one public meeting, as provided in Subsection (1)(b).
 - (b) At least 10 calendar days before the public meeting, the notice required under Subsection (1)(a) shall be:
 - (i) mailed and addressed to the record owner of each parcel within specified 600 feet of that property; or
 - (ii) posted on the property proposed for subdivision amendment, in a visible location, with a sign of sufficient size, durability, and print quality that is reasonably calculated to give notice to passers-by.
- (2) Each municipality shall provide notice as required by Section 10-9a-208 for a subdivision that involves a vacation, alteration, or amendment of a street.

1.6.6 *Hearing and notice for petition to vacate a public street. (10-9a-208)*

- (1) For any petition to vacate some or all of a public street or municipal utility easement the legislative body shall:
 - (a) hold a public hearing; and
 - (b) give notice of the date, place, and time of the hearing, as provided in Subsection (2).
- (2) At least 10 days before the public hearing under Subsection (1)(a), the legislative body shall ensure that the notice required under Subsection (1)(b) is:
 - (a) mailed to the record owner of each parcel that is accessed by the public street or municipal utility easement;
 - (b) mailed to each affected entity;
 - (c) posted on or near the public street or municipal utility easement in a manner that is calculated to alert the public; and
 - (d)
 - (i) published on the website of the municipality in which the land subject to the petition is located until the public hearing concludes; and
 - (ii) published on the Utah Public Notice Website created in Section 63A-16-601.

1.6.7 Applicant Notice Requirements

Each land use applicant shall be notified of the date, time, and place of each public hearing and public meeting to consider the application. The applicant will receive a copy of each staff report regarding the applicant or the pending application at least three business days before the public hearing or public meeting and any final action on a pending application. If the city fails to comply with the requirement an applicant may waive the failure so that the application may stay on the public hearing or public meeting agenda and be considered as if the requirements had been met. When required the applicant will provide the city with stamped and pre-addressed envelopes for each owner of record of each parcel located entirely or partly within 600 feet from any boundary of the proposed land use application (1200 feet for zoning or re-zoning).

1.6.8 Notice challenge. (10-9a-209).

If notice given under authority of this part is not challenged under Section 10-9a-801 within 30 days after the meeting or action for which notice is given, the notice is considered adequate and proper.

1.6.9 Notice for an amendment to public improvements in a subdivision or development. (10-9a-212)

Prior to implementing an amendment to adopted specifications for public improvements that apply to subdivision or development, a municipality shall give 30 days mailed notice and an opportunity to comment to anyone who has requested the notice in writing.

1.6.10 Hearing and notice procedures for modifying sign regulations. (10-9a-213)

(1)

(a) Prior to any hearing or public meeting to consider a proposed land use regulation or land use application modifying sign regulations for an illuminated sign within any unified commercial development, as defined in Section 72-7-504.6, or within any planned unit development, a municipality shall give written notice of the proposed illuminated sign to:

- (i) each property owner within a 500 foot radius of the sign site;
- (ii) a municipality or county within a 500 foot radius of the sign site; and
- (iii) any outdoor advertising permit holder described in Subsection 72-7-506(2)(b).

(b) The notice described in Subsection (1)(a) shall include the schedule of public meetings at which the proposed changes to land use regulations or land use application will be discussed.

(2) Bear River City shall require the property owner or applicant to commence in good faith the construction of the commercial or industrial development within one year after the installation of the illuminated sign.

1.7 Creation of Districts and Zone Map

In order to carry out the purposes of the Code, zone districts have been established as set forth in Chapter 7 of this Code. These zone districts are identified on the official zoning map, which is adopted as a part of this Code. In interpreting the zoning map, the following standards shall apply:

- (a) The zoning boundary lines are intended to conform to existing property boundary lines when not in a public right-of-way, or to follow the center line of public

rights-of-way (including prescriptive rights-of-way), unless the lines are located by specific dimensions, in which case the dimensions shall control. Where the zoning district lines approximately follow the lot lines as they exist at the date of adoption of this Code, the district lines shall be conformed to the lot lines.

- (b) Where the zoning district lines appear to have intentionally divided a lot or parcel between two or more districts, the applicable zoning for each portion of the lot or parcel shall be determined by using the scale shown on the map. If the placement of the district line cannot be determined, the standards of the zone allowing the less intensive land use shall be applied to the entire parcel.
- (c) Where the district lines are intended to follow natural land contours, such as the ridge tops, hillsides or waterways, the line shall be determined at the point at which the general slope of the land changes to 15% grade or in the case of waterways, the average centerline of the waterway. In the event of a dispute as to the location of the change in grade, the point shall be fixed with reference to topographic data submitted to the Town. Where land of less than 15% slope is surrounded by land of 15% or greater slope, the Planning Commission shall entertain an application to rezone the land of less than 15% slope to a suitable residential use if the Town staff determines that the land is adequately accessible and not within a sensitive lands overlay zone or designation, and one access of which is a road of standard width that does not exceed 8% grade, and that the grading of the road or roads to reach the land in question will not create hydrologic, erosion, geologic, or similar hazards for land lying below the proposed road, and that all cuts and fills for the road can be safely stabilized.

1.8 Penalties

Any person, firm, partnership, or corporation, or the principals or agents thereof violating or causing the violation of this Code shall be guilty of a Class "B" misdemeanor and punished upon conviction by a fine and/or imprisonment. In addition, the Town shall be entitled to bring an action to enjoin the continuation of the violation. Private Citizens of Bear River City or property owners shall also have a right to file actions to enjoin the continuation of a violation affecting their interests, provided that the plaintiff in such action shall give notice of the action to the Town Recorder prior to filing the action.

1.9 Licensing

All departments, officials and public employees of the Town who are vested with the duty or authority to issue permits or licenses, including business licenses shall conform to the provisions of this Code, and shall issue licenses and permits only in conformance with the provisions of this Code. Licenses issued in violation of this Code shall take no effect, and are null and void.

1.10 Zoning Map Adopted

The zoning map for Bear River City as presented to the Town Council and executed by the Mayor is the official zoning map for Bear River City. Upon amendment to the zoning map, the Mayor shall execute a new map, or re-execute the existing map with the amendments noted thereon in a timely manner.

1.11 Building Permits

Building permit applications are required in accordance with the Utah Uniform Building Standards Act Title 58, Chapter 56. The proper building permit application and supporting documents shall be submitted to the Zoning Administrator.

No building permit shall be issued for any building project unless the plans for the proposed structure (see definition in chapter 2) have been submitted to and approved by the Zoning Administrator. Proposals submitted to the Zoning Administrator shall be reviewed according to the Permitted Use Review Process or by procedures for handling non-permitted use proposals as outlined in this chapter. The Mayor and/or Councilmember over building permits may act in the absence of the Zoning Administrator.

1.11.1 Building Permit Classifications

Major Building Permits include applications for all main buildings (buildings, main), dwellings, or business establishments.

Minor Building Permits include applications for any of the following when proposed on a lot with an existing main building:

- (a) any new building or structure with square footage over state building code threshold;
- (b) the repair, renovation, remodeling, alteration, enlargement, rehabilitation, conservation, or reconstruction of a building;
- (c) all two story or higher buildings;
- (d) relocating, replacing, or demolishing any structure with square footage over state building code threshold;
- (e) changing the character or use of a building in a manner that increases the occupancy loads, other demands, or safety risks of the building;
- (f) plumbing, electrical, or gas work;
- (g) new or replacing decks, steps, or similar improvements over 30 inches off the ground;
- (h) retaining walls over 4 feet in height measured from the bottom of the footing to the top of the wall and retaining walls that support a surcharge;
- (i) fences over six feet high;
- (j) removing old roof shingles and replacing with new;
- (k) permanent swimming pools requiring installation of electrical or plumbing
- (l) underground emergency shelters (shelter design must be approved by an engineer).

Simple Building Permits include applications for constructing or relocating any building under state building code threshold, or any other new structures not covered under Major or Minor Building Permits.

1.11.2 Exemptions from permit

Permits shall not be required for the following:

Building:

- (a) Sidewalks and driveways.
- (b) Painting, papering, tiling, carpeting, cabinets, counter tops and similar finish work.
- (c) Window replacement, if size and structure are not altered.
- (d) Temporary Prefabricated swimming pools that are less than 48 inches deep.
- (e) Swings and other playground equipment.
- (f) Window awnings supported by an exterior wall which do not project more than 54 inches from the exterior wall and do not require additional support.
- (g) Applying new shingles over one layer of previous shingles

Electrical:

- (h) Reinstallation of attachment plug receptacles but not the outlets therefor.
- (i) Replacement of branch circuit over current devices of the required capacity in the same location.
- (j) Electrical wiring, devices, appliances, apparatus or equipment operating at less than 25 volts and not capable of supplying more than 50 watts of energy.
- (k) Minor repair work, including the replacement of lamps or the connection of approved portable electrical equipment to approved permanently installed receptacles.

Gas and Mechanical:

- (l) Replacement of any minor part that does not alter approval of equipment or make such equipment unsafe.

Plumbing:

- (m) The stoppage of leaks in drains, water, soil, waste or vent pipe; provided, however, that if any concealed trap, drainpipe, water, soil, waste or vent pipe becomes defective and it becomes necessary to remove and replace the same with new material, such work shall be considered as new work, and a permit shall be obtained and inspection made.
- (n) The clearing or stoppages or the repairing of leaks in pipes, valves or fixtures, and the removal and reinstallation of water closets, provided such repairs do not involve or require the replacement or rearrangement of valves, pipes, or fixtures.

1.11.3 Application for Permitted Uses

Major Building Permit Applications shall provide all of the permit information; Minor Building Permit Applications shall provide (a), (b), and (c) of the permit information and any other information pertinent to the project as required by the Zoning Administrator; Simple Building Permit Applications shall provide (a), (b), and (c) of the permit information.

Permit Information

- (a) A completed and signed building permit application obtained from the city. Include name and address of owner or responsible agent. The application shall include contractor's license numbers with contact information and necessary signatures with names legibly printed.
- (b) A legal description of the property and proof of ownership. This may be a tax notice or a title insurance document. The information must show the location, address, or references for new main buildings so a street address can be assigned when pertinent.
- (c) A Site Plan, for New Residential Buildings and Residential Modifications changing the building footprint, and all Commercial and Industrial Building must be drawn and certified by an architect or engineer. Building permits for other uses do not require architect or engineer drawing nor certifications. A Site Plan must show the following:
 - (1) the lot and its dimensions;
 - (2) the location of the proposed structure on the lot with distance to property lines and other structures on the lot;
 - (3) front, rear, and side yards identified on new homes or main buildings;
 - (4) proposed sewer connection with clean out clearly marked, when applicable;
 - (5) proposed driveway details, when applicable;
 - (6) streets, roads, rights-of-way, ditches, easements, and land uses;
 - (7) proposed irrigation ditches, drainage, and landscaping plans;
 - (8) identification of any underground field drains
 - (9) necessary explanatory notes.

Three copies of the site plan, drawn to scale, are required for major and minor permits. One copy of the site plan is required for simple permits which may be hand sketched unless the Zoning Administrator requests it be drawn to scale.

- (d) Engineered Plans
 - (1) Submitted on 17" X 11" reduced copy

- (2) Be “originally stamped” by a licensed professional engineer and designed to meet the following standards:
 - I Seismic Zone D2
 - II 90 mph wind, Exposure C
 - III 30 pound per square foot snow load
 - (3) Must show all four elevation views.
 - (4) Must detail each floor level including footing and foundation.
 - (5) Must detail electrical layout.
 - (6) Must provide section details.
 - (7) Must indicate the square footage of each floor and if space is finished or unfinished.
- (e) Surveyor’s Recordation Certificate or Certificate of Survey:
 Two copies of a Surveyor’s Recordation Certificate or signed Certificate of Survey for the proposed building lot are required. Property corner markers in compliance with current requirements of the State of Utah are required at all angles or corners of the building lot. All monuments shall be properly set in the ground and approved by a Registered Land Surveyor (licensed in the state of Utah) prior to approval of the building permit application. More detailed survey information may be requested for projects with structures on or near lot lines, or when the lot lines are difficult to determine from existing plats and monuments. Topographic data may be required when the site is sloping or when the building height cannot be readily determined from the elevations without topographic data. If one corner marker is missing the Zoning Administrator may approve the application if the property lines are easily determined.
- (f) Proof of culinary water service.
 - (g) Irrigation water shares dedicated to Bear River Town Corporation as required by current city ordinances.
 - (h) Sewer connection application approval (signature of council member over sewer on site plan)
 - (i) Drainage plan approval (signature of council member over roads on site plan)
 - (j) Motor vehicle access, including individual parking stalls, driveway details, circulation patterns, planned curb, gutter, sidewalk and/or trail locations.
 - (k) Trash storage plans (not city automated cans).

1.12 Permitted Use Review Process

On any proposal to construct a building or other improvement to property which is defined by this Code as a permitted use in the zone in which the building is proposed, the Zoning Administrator shall review the submission to determine whether the improvement:

- (a) is a permitted use within the zone for which it is proposed,

- (b) complies with the requirements of that zone for building height, setback, side and rear yards, and lot coverage;
- (c) meets applicable parking requirements;
- (d) conforms to any architectural design guidelines established for that zone or area;
- (e) will require an environmental impact statement if it lies in a sensitive lands area (see chapter 9)
- (f) has met the requirements of the infrastructure review process (see section 1.13).
- (g) will require a certificate of appropriateness from the design review committee (see section 3.26)
- (h) will require a certificate from the technical review committee (see section 3.27);
- (i) meets public works construction standards;
- (j) meets irrigation ditch enclosure requirements, if applicable, as outlined in current city ordinances, Bear River City Public Works Construction Standards, or as recommended by the City Engineer;
- (k) complies with local laws and ordinances adopted by the city;
- (l) is located in an Area of Special Flood Hazard as identified on the Flood Insurance Rate Map (if so, a Development Permit application is required);
- (m) will disturb any Field Drains as identified in the Bear River City Field Drain Identification Project and/or updates
- (n) requires a driveway culvert
- (o) elevations, drainage, grades and slopes approved by City engineer
- (p) I not located in an area identified as “not buildable” in the Pre Disaster Mitigation Plan

Upon finding that the proposal complies with the applicable requirements, and can be adequately serviced by existing utility systems or lines when needed, the plans shall be reviewed for Building Code compliance. All applicable fees must be paid before permit issuance.

The permit becomes null and void if work or construction authorized is not commenced within 180 days, or if construction or work is suspended or abandoned for a period of 180 days at any time after work is commenced.

1.12.1 Application for Permitted Uses

Upon application for a building permit for a permitted use the applicant shall have permanent reference monuments as required, the application shall contain the following information, and any additional information required by the current Building Codes:

- (a) When a public or main building, or dwelling of any type is to be built, permanent reference monuments are required in each of the four corners of the lot it is to be built on. If a lot contains more than four corners, only four permanent reference monuments are required. If a lot contains less than four corners at least three permanent reference monuments are required. All monuments shall be properly set in the ground and approved by a Registered Land Surveyor (licensed in the state of Utah) prior to approval of the building permit application. If permanent reference monuments are already in place additional monuments are not required.
- (b) When a structure is to be built; the footing and foundation details, site plan, and elevations of all sides of the structure shall be submitted with the application, and all fees paid, prior to excavation.
- (c) A Site Plan Showing: (1)
the lot and its dimensions;

- (2) the location of the proposed structure on the lot with distance to property lines and other structures on the lot;
- (3) front, rear, and side yards identified on new homes or main buildings;
- (4) proposed sewer connection with clean out clearly marked, when applicable;
- (5) proposed driveway details, when applicable;
- (6) streets, roads, rights-of-way, ditches, easements, and land uses;
- (7) proposed irrigation ditches, drainage, and landscaping plans;
- (8) necessary explanatory notes.

The site plan must be drawn to scale and show distances from the property lines and existing structures. A certified survey may be required on projects with structures on or near the lot lines, or when the lot lines are difficult to determine from existing plats and monuments. Topographic data may be required when the site is sloping or when the building height cannot be readily determined from the elevations without topographic data.

- (d) A statement of the name and address of the owner or responsible agent, and a telephone number.
- (e) The location of the proposed structure by street address or by reference to existing structures so that the location can be identified and assigned a street address.
- (f) A legal description of the property and proof of ownership.
- (g) The location and size of adjacent utility lines.
- (h) Approval of permitted uses shall be noted by the issuance of a building permit in compliance with the provisions of the current Building Codes, this Code, and receipt of all applicable fees.

1.13 Review and Regulations for Impact on Public Infrastructures

1.13.1 Infrastructure Review

Although the City endeavors to provide infrastructure which will adequately serve buildings and structures allowable within each zone in Bear River City, certain buildings, developments, and structures, because of size, type of construction, or lot characteristics, present peculiar or excessive demands on City infrastructure. For these reasons, the developer is responsible to perform an impact analysis in a form and methodology acceptable to the City to determine the possible impacts on infrastructure.

In order for the City to determine whether existing infrastructure is adequate, or what additional infrastructure is needed to meet the particular needs of certain types and sizes of buildings and structures which are permitted uses in the zone; the following types and sizes of proposed buildings and structures as well as developments are subject to the review process for impact on existing infrastructure.

- (a) All commercial buildings or structures of Class III, IV or V construction, as defined by the Uniform Building Code, greater than 10,000 square feet, or;
- (b) Any building or structure over 10,000 square feet within fire separations as defined in Section 505 of the Uniform Building Code, or;
- (c) All commercial buildings and structures located on parcels of one-half acre or larger, or;
- (d) All buildings or structures which are required to have fire sprinkling systems under Bear River City or Fire District ordinance or resolution, or;
- (e) All buildings or structures located on lots which have an average slope of more

than 15 percent, or;

- (f) Any industrial or manufacturing facility that deals with products or processing materials that are or could become explosive, flammable or toxic according to the Uniform Fire Code, or,
- (g) Any Subdivision project with 4 or more dwelling units, but not including minor Subdivisions.
- (h) Any development that requires the extension of any public infrastructures or utilities.

1.13.2 Scope of Review

For proposed buildings, structures or uses that are permitted in the applicable zone shall be reviewed for a determination of the ability of existing City infrastructure to provide adequate water for culinary, irrigation, and fire flow purposes, the proper handling of snow melt, snow storage, storm drainage, slope preservation, mitigation of impact on roads by construction and permanent traffic, and ensuring safe access for users and emergency vehicles in accordance with City codes, standards, and ordinances as set forth in this ordinance which shall be in addition to all other adopted codes and ordinances, including the Codes of other Jurisdictional Governing Authorities. The technical review committee may be used if constituted as per this code, to assist in the infrastructure impact review process.

1.13.3 Review Procedure

Buildings and structures which, although are permitted uses in the zone proposed and not subject to zoning or use review, are subject to review for impact on existing infrastructure according to the standards described in this section. The following review procedure shall be followed:

- (a) **Application for Building Permit.** Upon making an application for a building permit, the applicant shall supply the Zoning Administrator with plans and specifications sufficiently detailed to determine whether the proposed building(s) or structure(s) are subject to further infrastructure review. If, according to the standards found in this section, any proposed building or structure triggers infrastructure impact review, then a building permit shall not be issued and the Zoning Administrator shall refer the applicant to the appropriate city official and/or the culinary water provider for review of the impact of the proposed buildings and structures on existing City and/or other infrastructure to determine what, if any, additional infrastructure is necessary.
- (b) **The Application.** Upon referral of the application for a building permit to the City for infrastructure impact review, the City may request from the applicant any additional studies, plans, surveys, specifications and information necessary to review the infrastructure impacts. The following types of information may be requested by the appropriate town official and/or the culinary water provider to the extent relevant.

1.13.3.1 To Determine the Impact on Drainage:

- (a) Amap of the site showing the existing conditions prior to the demolition of any existing structures and any grading, any known geologic or natural hazards, with north arrow and scale;

- (b) topography with contours shown at intervals of not more than five feet of the site and as the site adjoins contiguous properties;
- (c) vegetation type and location;
- (d) soil type and load carrying capacity information;
- (e) flood plain and high ground water areas, known spring and seep areas and ditches or canals;
- (f) all existing roads, fences, irrigation ditches, and drainage facilities;
- (g) location and size of the nearest storm drainage facilities the site could drain to, water lines and sanitary sewer lines; and where and how the developer proposes to connect to the existing drains.
- (h) site plan of the proposed buildings and structures showing building locations;
- (i) proposed road locations and other circulation features;
- (j) proposed finished grades;
- (k) proposed drainage, drainage works, detention ponds, retaining walls, and erosion control plans;

1.13.3.2 To Determine the Impact on Culinary Water, Fire Flows and Sewage:

- (a) location and size of the nearest water main and sanitary sewer lines to the project to which the project can drain or be supplied; and where and how the applicant proposes to connect to the systems;
- (b) site plan and floor elevations (including building height) of all proposed buildings and structures showing building locations, construction type and materials;
- (c) proposed easements for new utility services or relocated utility services;
- (d) fire hydrant locations and building sprinkling plans.
- (e) estimated peak culinary water demands, including irrigation and water demand for fire flows.
- (f) proof of “wet” water in adequate quantity and quality, acceptable to the Town standards. If the developer is supplying his/her own water or is transferring water rights to the Towns culinary system.
- (g) other specific information and scientific data and opinions

which, in the opinion of the appropriate town official and/or the culinary water provider, is useful or necessary for the meaningful review of the project. Such additional information may be required from the applicant based on the nature of the project or the site.

1.13.3.3 To Determine the Impact on Slope Retention:

- (a) Topography existing before construction and proposed finished grades, both on the site and as they relate to adjoining property;
- (b) proposed drainage, drainage works, retaining walls, and erosion control plans;
- (c) proposed landscaping;
- (d) complete, detailed construction drawings and support documentation of any and all structures sufficient to demonstrate compliance with applicable standards, codes and ordinances; or general architectural concept drawings of proposed buildings, showing roof plan and cuts and fills;
- (e) other specific information and scientific data and opinions which, in the opinion of the appropriate town official, is useful or necessary for the meaningful review of the project. Such additional information may be required from the applicant based on the nature of the project or the site.

1.13.3.4 To Determine the Impact on Streets and Pedestrian Facilities:

- (a) Prepare a site plan which coordinates pedestrian connections, sidewalks, and bike paths if any such pedestrian facilities are shown on the Trails Master Plan or the Streets Master Plan, if they are currently adopted.
- (b) Submit construction staging location plan.
- (c) Submit estimated truck traffic trip numbers for construction traffic.
- (d) If requested by the Town Engineer, the project applicant shall submit reproducible measurable pavement quality testing analyses for each street or roadway which will be utilized by any traffic generated by or relating to the proposed project, including but not limited to construction traffic. Such analyses will be submitted both before permit issuance and before building occupancy and shall use a nationally recognized pavement quality testing machine as approved by the Town Engineer. Such analyses will be used to determine construction impacts on existing streets at the end of construction such that repairs can be made at the expense of the project proponents to return the pavement to its original quality.

1.13.4 Department Action

Within 30 working days from the receipt of the complete application including all

requested information for infrastructure impact review, the Zoning Administrator and/or other appropriate Town officials and/or the culinary water provider shall have reviewed the project and determined whether existing infrastructure is sufficient to adequately serve any proposed buildings or structures. If the data is sent to an engineer or other consultant for determination of impacts, the applicant shall pay the costs associated with the professional review.

If the existing infrastructure is adequate to serve any proposed buildings or structures, then a building permit shall be issued in accordance with the Uniform Building Code and Town Ordinances. If upon review existing infrastructure is found to be inadequate to serve any proposed buildings or structures, the building permit shall be withheld. At the option of the Town, the applicant may either

- (a) Change the type, scale or location of any and all proposed buildings or structures in such a manner that existing infrastructure may adequately serve all proposed buildings or structures, or
- (b) Provide at applicant's expense the additional infrastructure necessary to adequately serve all of applicants proposed buildings or structures according to designs and specifications approved by the Town, or
- (c) Pay a proportionate share of a Town project that would mitigate the impact as detailed by the Town Council and/or its staff.

Upon submission of plans changing the type, scale or location of any or all proposed buildings or structures in such a manner that existing infrastructure is adequate to serve all proposed buildings or structures; or, upon submitting plans for additional infrastructure and a letter of credit or escrow agreement to the Town for the full cost of the additional infrastructure required as estimated by the Town Engineer, a building permit shall be issued in accordance with Town codes and ordinances.

1.13.5 Appeal and Review

If the applicant does not agree with the determination of the Zoning Administrator, other Town Staff or the culinary water provider that existing infrastructure is inadequate, or with the requirement for additional infrastructure, the applicant may request Town Council review. The Town Council is empowered to affirm, reverse or modify the determination of the Zoning Administrator, other Town Staff or Town engineer/consultant but not the culinary water provider. All actions regarding infrastructure impacts and the requirements of the Planning Commission or Town Staff are appealable to the Town Council.

If the Zoning Administrator, or other Town Staff have not acted on an application or has not indicated to the applicant what existing infrastructure is inadequate within 30 working days after complete information submission, the application shall be automatically forwarded to the Planning Commission for determination of adequacy of existing infrastructure.

1.13.6 Transferability

The infrastructure review and approval is transferable with the title to the underlying property so that an approved project may be conveyed or assigned by the applicant to others without losing the approval. The permit cannot be transferred off the site on which the approval was granted.

1.13.7 Expiration

If a building permit is not obtained within twelve months from the date of approval, then the infrastructure review and approval process must be repeated prior to issuance of a

building permit. If a building permit expires before actual construction of buildings or structures, the infrastructure review and approval process must be repeated prior to issuance of another building permit. If a permit is not taken in six months, the review shall determine whether off-site conditions or demands have changed the ability of the system to meet the demands of the project under review. The permit requirements may be modified to adjust to the new capacity or demand.

1.13.8 Standards for Review

No building permits shall be issued on buildings and structures subjected to infrastructure review unless it is found by the Town that there is sufficient infrastructure capacity, according to the standards adopted by the Town, either existing or to be provided by the applicant to adequately serve the proposed buildings and structures. Specific review items include: delivery of adequate water for culinary and fire flow purposes, safe vehicular and pedestrian access for owners, users and emergency vehicles, and proper handling of snow melt and storm drainage and slope preservation. The standards to be applied for review are:

- (a) **Standards for Water Delivery.** The standards for adequate delivery of water shall be as applicable: the Bear River City Fire Flow Standards, if adopted; the Box Elder County Fire District Fire Flow Standards; the ISO or NFPA standards for fire flow, the Bear River City Design Standards, Construction Specifications and Standard Drawings, if adopted; and, the County and/or State Department of Health, Drinking Water Regulations as now constituted and as may be amended.
- (b) **Standards for Site Drainage.** The standards for adequate site drainage are the Uniform Building Code, as adopted by Ordinance, or its successor, and the Bear River City Design Standards, Construction Specifications and Standard Drawings as now constituted or as may be adopted or amended.
- (c) **Standards for Access.** The standards for access to the building or structure are the Uniform Fire Code adopted by Ordinance, or its successor, the Streets Master Plan or Land Use Map, and the Bear River City Design Standards, Construction Specifications and Standard Drawings as now constituted or as may be adopted or amended.
- (d) **Standards for Slope Retention.** The standards for slope retention are the Uniform Building Code as adopted by Ordinance, or its successor, and the Bear River City Design Standards, Construction Specifications and Standard Drawings as now constituted or as may be amended.

1.14 Conditional Use Review Process

Conditional use is defined as: A use that, because of its unique characteristics for potential impact on the city may not be compatible in some areas or may be compatible only if certain conditions are required that mitigate or eliminate the detrimental impacts. (Utah code 10-9a-103).

Zoning segregates land use per community preferences. There will be proposals where a land use not normally compatible in the zone can be made compatible if properly and carefully planned.

The Zoning Administrator will act as the advisory body for any one interested in applying for a conditional use permit.

1.14.1 State Code Direction

(A) A conditional use shall be approved if reasonable conditions are proposed, or can be imposed, to mitigate the reasonable anticipated detrimental effects of the proposed use in accordance with applicable standards.

(B) If the reasonable anticipated detrimental effects of a proposed conditional use cannot be mitigated by the proposal or the imposition of reasonable, conditions to achieve compliance with applicable standards, the conditional use may be denied.

The Utah State Statute requires that standards be set forth in this ordinance for the granting or denying of a conditional use. (Utah Code 10-9a-507). The granting or denial of a conditional use permit is not a legislative act. It is an administrative act.

The City must keep minutes of all meetings and decisions that are made during the conditional use permit process. (Amendment #3, Ordinance 2007-07-06)

1.14.2 The Application

A conditional use permit application shall be filed on a form prepared by the City, and shall be supported and accompanied by the following information (eight sets are required):

- (a) Amap of the site showing the existing conditions prior to the demolition of any existing structures and any grading, showing north arrow and scale;
- (b) Amap identifying the subject site in relation to adjoining public streets and the neighborhood in which it is located with north arrow and scale;
- (c) The boundaries of the site, and any easements of record or known prescriptive easements;
- (d) Topography with contours shown at intervals of not more than five feet;
- (e) Vegetation type and location; soil type and load carrying capacity information;
- (f) Flood plain and high ground water areas, known spring and seep areas and ditches or canals as well as known wetlands;
- (g) All existing roads, fences, irrigation ditches, and drainage facilities;
- (h) Location of public utility facilities and easements;
- (i) Site plan of the proposed conditional use showing building locations;
- (j) Proposed road locations and other circulation features;
- (k) Proposed finish grade;
- (l) Proposed drainage, drainage works, retaining walls, and erosion control plans;
- (m) Proposed location of all site improvements such as arenas, barns, plazas, tennis courts, pools, and similar improvements;
- (n) Proposed easements for new utility services or relocated utility services;
- (o) Proposed landscaping;

- (p) Designations of proposed ownership of areas shown on site plan as being part of a common area or dedicated open space;
- (q) Proposed intersections with existing public streets;
- (r) General architectural concept drawings of proposed buildings;
- (s) Lighting plans, if any;
- (t) Signage plans, if any;
- (u) Proposed location of a common satellite receiving station or other antennae;
- (v) And any other information as may be useful or necessary for the meaningful review of the project. Additional information may be requested at the pre-application conference based on the nature of the project or the site .
- (w) A fee will be charged by the city for a conditional use permit application. The amount of the fee will be reviewed each year by the City Council and will be posted on the yearly fee schedule.

1.14.3 *Written Statement and other Documentation*

A written statement shall be submitted with the following documentation containing and/or explaining the following information:

- (a) Preliminary title report showing the title to the property, and listing all encumbrances, covenants, easements, and other matters affecting title, and a legal description of the site;
- (b) Copies of any covenants or easements which are referred to in the title report;
- (c) A development schedule indicating phased development, if any, and the estimated completion date for the project;
- (d) Stamped and addressed envelopes for all property owners within one thousand (1000) feet of the perimeter of the site or lot line with their current mailing addresses as shown from the most recently available county assessment rolls.
- (e) A general description of the project, prospective tenants or types of tenants of occupants.
- (f) Any other information that might be helpful to the City in reviewing the proposed use.

1.14.4 *Notice/Posting*

Upon receipt of the complete conditional use permit application and payment of all applicable fees, notice shall be given to the public in accordance with the provisions of Section 1.6 of this Code.

1.14.5 *Public Comment*

The posted, mailed, and published notice shall advise the public that a conditional use permit application or an application to amend a conditional use permit has

been filed, and shall state that interested persons may review the application by contacting City Staff, the Zoning Administrator, or Planning Commission Chairman. The notice shall provide a public comment period for not less than 10 days during which written comments may be submitted for consideration while reviewing the project. Comments filed after the close of the comment period do not have to be accepted. All persons who have submitted written comments shall receive notice of the approval or denial of the application and the conditions imposed.

1.14.6 City Action

1.14.6.1 Time Frame

The conditional use permit application will be started in review by the first Planning Commission meeting, provided that it is on the agenda, that is held after the application has been received by the Zoning Administrator and the applicable fees have been received by the city recorder.

1.14.6.2 Staff Review

The Zoning Administrator and other appropriate City officials, including the Technical Review Committee and/or Design Review Committee, shall review the project and propose a conditional use permit encompassing the conditions of development and approval. The permit shall incorporate the site plans and architectural plans for the project. If the developer accepts the conditions imposed, the conditional use application shall be placed on the agenda of the Planning Commission for final approval. The staff may recommend immediate review of the permit to the next scheduled Planning Commission meeting (if notice requirements under section 1.6 can be met) if the staff determines that the conditions may be better prepared and evaluated by the Planning Commission.

1.14.6.3 Planning Commission Review

The Planning Commission shall determine if all points of this Code have been complied with for review and compliance of the conditional use processes and may further amend, add or delete conditions prior to their approval. If the Planning Commission recommends denial of the permit, the applicant may amend and re-submit the application. If the Planning Commission denies the permit, the applicant may appeal to the Appeal Authority.

1.14.6.4 Planning Commission Approval

The Planning Commission may approve, amend or deny the conditional use permit application. After approval of the conditional use permit, necessary building permits can be issued by the Zoning Administrator as provided in the Uniform Building Code, this Code and other local laws.

1.14.6.5 Appeal

If the Zoning Administrator and the applicant are not able to agree on conditions of approval, the developer may still go before the Planning Commission for review or may withdraw the application. If the applicant does not agree with the decision of the Planning Commission, the applicant may go to the Appeal Authority.

1.14.7 Plat Approval

When a conditional use permit requires the recording of a plat, the final plat shall be taken to the Planning Commission for plat approval only

1.14.8 Transferability

A conditional use permit may be transferable with the title to the underlying property so that an approved project may be conveyed or assigned by the applicant to others only upon review and approval by the Planning Commission. The permit cannot be transferred off the site on which the approval was granted.

1.14.9

Time Limit

Action authorized by a Conditional Use Permit must commence within one year of the time the permit is issued. If the permit holder has not commenced action under the permit within this time, the permit shall expire and the holder must apply for a new permit. The Planning Commission may grant an extension for good cause shown. Only one extension may be granted and the maximum extension shall be six months. In order to obtain an extension, the permit holder must apply for an extension in writing before the expiration of the original permit. The application must be submitted to the City Recorder and the application must describe the cause for requesting the extension.

1.14.10

Standards for Review

Matters as may be advised by the City or the Technical Review Committee:

1. No conditional use permit shall be issued unless the City finds that the application complies with all requirements of this Code;
2. That the use will be compatible with surrounding structures in use, scale, mass and circulation;
3. That the use is consistent with the Bear River City General Plan; and
4. That the effects of any differences in use or scale have been mitigated through careful planning.
5. Review for impact on City infrastructures will be made as previously outlined in the section 1.13 of this code. If required, infrastructure improvements must be concurrently constructed and timed carefully with the development.
6. Costs associated will be paid by the applicant/developer as previously outlined.

The City shall review the following items as a guide when considering a conditional use permit, other information may be required:

- (a) Size and location of the site;
- (b) Traffic considerations including capacity of the existing streets in the area;
- (c) Utility capacity;
- (d) Emergency vehicle access;
- (e) Location and amount of off-street parking;
- (f) Internal traffic circulation system;
- (g) Fencing, screening, and landscaping to separate the use from adjoining uses;
- (h) Building mass, bulk, design and orientation, and the location of buildings on the site; including orientation to buildings on adjoining lots;
- (i) Usable and permanent open space considerations;
- (j) Signage and lighting;

- (k) Noise, vibration, pollution, odors, steam, or other mechanical factors that might affect people and property off site;
- (l) Control of delivery and service vehicles, loading and unloading zones, and screening of trash pick-up or waste storage areas;
- (m) Expected ownership and management of the project as primary residences, nightly rental, or commercial tenancies;
- (n) Design or Architectural Review as may be advised by the Planning Commission or the Design Review Committee;

1.14.11 Sensitive Lands Review

If a conditional use permit application is located within the Sensitive Area Overlay Zone, or designated area, additional requirements and regulations may apply. See the Sensitive Lands Provisions in Chapter 9.

1.14.12 Design Review

The Planning Commission or Town Staff may require a certificate of appropriateness from the design review committee if one is established and if standards have been developed for the applicable zone district. Recommendations of that committee may be used as guidelines in the establishment of conditions under this permit as outlined in Section 3.26.

1.14.13 Technical Review

The Planning Commission or City Council may require a certification of review from the technical consultant(s). The consultant(s) can review and make suggestions on a project that may be beyond the expertise of the Planning Commission or Staff. Recommendations may be used as guidelines in the establishment of conditions under this permit as outlined in Section 3.27 of this code.

1.15 Appeals and Review Process

Decisions by a Land Use Authority regarding zoning decisions, application of this code, or other city laws and ordinances may be appealed to an Appeal Authority as outlined in Table 2.1 of this code. The adversely affected party shall have ten (10) calendar days to appeal and has the burden of proving that the Land Use Authority erred. Any person(s) within the City who believes he/she may be adversely affected by a decision of a Land Use Authority regarding the application of the decision or this code, and/or the owner of the subject property affected, shall have standing to appeal a decision. Appeals from actions of a Land Use Authority shall be by letter or petition and contain the name, address, and telephone number of the petitioner, his or her relationship to the project or subject property, and the reasons for requesting review, including specific provisions of this Code, if known, that are violated by the action taken. The adversely affected party must present every theory of relief that it can raise in district court. (Reference Utah State Code 10-9a-701)

1.15.1 Written Findings of Denial Required

The Land Use Authority shall always prepare detailed written findings on any application that it denies, amends or approves. These findings shall state the reasons for the action and the provisions of this Code or other City ordinances, or guidelines, or applicable State or Federal laws or regulations that would be violated by the action, and the proposed

conditions of action to be imposed and the reasons why those conditions were thought necessary. These findings shall then be made available to the Appeal Authority for their use in the appeal process.

1.15.2 Appeal Petitions Process

Besides the owner of the property acted on by the Land Use Authority, any person living within the City who submitted written comment on a proposal before the Land Use Authority, and the owner of any property within the City has the right to appeal to the Appeal Authority any final decision of a Land Use Authority. The petition must be filed in writing with the City Recorder within ten (10) calendar days of final project action. The petition for the appeal shall state the name, address, and telephone number of the petitioner and his/her agent, if any, the name of the project, and the grounds for the appeal. The Appeal Authority shall set a date for the appeal, which shall be no more than thirty (30) calendar days from the date the notice of appeal is filed with the Recorder and meet the notice requirements of section 1.6. The City Recorder shall notify the petitioner and the owner of the project of the appeal date. The City Recorder shall obtain the findings from the Land Use Authority and all other pertinent information and transmit them to the Appeal Authority .

1.15.3 Action on Petitions

Acting in a quasi-judicial manner the Appeal Authority may affirm, reverse, or affirm in part and reverse in part any decision of the Land Use Authority regarding land use decisions.

1.15.4 Stay of Approval Pending Review or Appeal

Upon the filing of a non-owner petition or a petition by the owner for appeal or review by an Appeal Authority of a Land Use Authority decision, any action passed on this matter by the Land Use Authority will be suspended until the Appeal Authority has acted on the appeal.

1.15.5 Appeal from the Appeal Authority

The owner of any project, or any person aggrieved by the approval of any project may appeal from the final action by the Appeal Authority affecting the project by filing a petition for review with the district court or request for arbitration to the property rights ombudsman . The decision of the Appeal Authority shall stand, and those affected by the decision may act in reliance on it unless and until the court enters an interlocutory or final order stating the effectiveness of that decision or by an order of arbitration from the property rights ombudsman.

1.15.6 Finality of Action

If no appeal has been taken at the end of ten (10) days from the date of final action by the Land Use Authority, the action is final.

1.16 Termination of Projects

It is the policy of the Town to require developers submitting projects to the planning process to move their projects to either approval or denial in a reasonably expeditious manner. The time required in the planning review process will vary with the size and complexity of each proposal, and the establishment of exact time requirements for review is impractical. It is the policy of the Town to formally deny projects submitted to the process which remain inactive for long periods of time due to acts or omissions of the developer.

1.16.1 Termination of Applications

When the Zoning Administrator believes that a project that has been formally submitted is not making normal progress towards final approval, he/she shall take the project before the Planning Commission and request the Planning Commission to deny the project application and close the files with respect to that project. No project shall be taken to the Planning Commission for denial on the basis of inaction without giving 60 days written notice to the developer and the responsible agent by certified mail. Such notice shall state the intent of the Zoning Administrator to have the project denied because of inaction and the time, place, and date when the matter will be taken before the Planning Commission.

1.16.2 Inaction Defined

A project shall be deemed inactive and subject to denial on the basis of inactivity if, through the act or omission of the developer and not the Town:

- (a) More than three months has passed since the last meeting of the Town officials or staff and the developer;
- (b) More than three months has passed since a request for additional information was made by the Town which request has not been complied with or the developer's reasons for non-compliance are not stated;
- (c) The developer is more than 60 days in default of the payment of any fee assessed by ordinance, or has not paid the fee under protest;
- (d) The developer has stated his intent to abandon the project;
- (e) The project appears to have been abandoned; or
- (f) The application appears to have been filed in bad faith for the purpose of attempting to vest rights prior to a zoning change or code change, without actual intent to construct the project applied for.

Delays occasioned entirely by internal delays of the Town or any commission or board shall not be cause for termination.

1.16.3 Reinstatement

A developer may appeal the Planning Commission's denial of a project for inactivity to the Town Council, or the action may be called up by the Council. The Town Council may reinstate subject to payment of full or partial submission fees, reinstate subject to specific ordinance changes, or deny reinstatement. If reinstatement is denied, all interest in the application ends. If the developer desires to proceed with the project, he must start at the beginning of the process with a new submission and payment of new submission fees, and shall be subject to all ordinances then in effect.

1.17 Appearance before Boards, Commissions and Councils

All persons speaking before any Town agency, department, committee, commission, or board or the Town Council on behalf of the owners of any project shall provide reasonable evidence of their agency relationship with the owner. This agency shall be presumed if the spokesman is associated with the architect or engineer whose name appears on the plans, or if the owner is present. The Planning Commission or the Town Council may request other persons appearing to speak in any agency position with any project to provide a statement signed by the owner indicating the nature of the relationship and the authority of the agent to make decisions or representations concerning the project.

1.18 Variances and Special Exceptions

Any variances or special exceptions to this Code shall be granted only by the Appeal Authority under the provisions of Chapter 5 of this Code prior to the issuance of any conditional use permit or other approval by a Land Use Authority. All action on an application shall be stayed upon learning that a variance or special exception is required until the applicant shall have obtained the variance or special exception or the request is denied by the Appeal Authority . Appeals from final action of the Appeal Authority shall be made to the District Court as provided by state law.

1.19 Relation to Prior Development and Subdivision Ordinance

The procedures set forth in this Code are intended to supersede any inconsistent procedural provisions in the previous development and subdivision ordinance. The substantive requirements of the application form and the review process shall remain unchanged, but all final actions under that ordinance are subject to the appeal processes set forth herein, and all applications for subdivision approval are subject to termination as set forth herein.

1.20 Vesting of Zoning Rights

Upon payment of the required application fees and submission of a completed application, as determined by the Zoning Administrator or Planning Commission, an applicant shall be entitled to have the filed application reviewed and acted upon pursuant to the terms of the Land Management and Development Code or development code and zoning map in effect at the time of filing of the application, subject to the exceptions set forth below. The applicant may take advantage of changes in the Code and zoning map that would permit greater density or more intense use of the land, provided however, that these changes may be deemed a modification of the plan and require the payment of additional planning review fees.

Non-zoning related matters, including, but not limited to site development standards, procedural requirements and building code requirements, will not vest until complete building permit applications have been filed and required fees have been paid. Water and Sewer connection availability, costs of water and sewer connection and water development fees, and applicable impact fees and other charges will vest only upon payment of the building permit application fees and submission of all the materials necessary for the issuance of a building permit.

Vesting of all permits and approvals terminates upon the expiration or termination of the permit or approval.

1.20.1 Exceptions

Applicants shall not be entitled to review and approval of applications pursuant to the terms of the Code in effect at the time of application when revisions to the Code are pending at the time of application which would prohibit or further condition the approval sought, or when there exists a compelling reason for applying a new standard or requirement retroactively to the time of application.

1.21 Plat Approval

On all projects requiring the recording of a plat or record of survey map under applicable State law, the plat shall conform to the following standards before approval will be granted by the Town:

1.21.1 Owner's Execution

A subdivision plat must be signed by the owner of the property and all persons claiming an interest in the property within the plat, including those holding a security interest in the property, excluding mechanic liens and judgment liens. All owners' signatures must be legally acknowledged.

1.21.2 Contents of Plat

The plat must have signature blocks for the Planning Commission Chairman, Mayor, City Recorder, and County Recorder and as applicable the City Engineer, Culinary Water Authority, Sewer Authority, Irrigation Water Authority, Street Authority, Fire Authority, School District, and City Attorney. The survey data and accuracy of the plat must be certified by a licensed surveyor, and the plat must bear the surveyor's official stamp.

1.21.3 Submission

The submission for plat approval must be accompanied by any covenants, declarations, easements, dedications of rights-of-way, or similar documents that are in addition to the contents of the plat. The submission must also be accompanied by a current title report showing the persons having an interest in the property, and verifying the ownership is consistent with the ownership as indicated on the plat. The legal descriptions of the property must also be consistent among the plat, declarations or covenants and title report.

1.21.4 Recording

Upon granting of final approval by the City Council. The City shall have no obligation to advance recording fees, but shall deliver the plats to the County directly rather than through the developer's designated title company. No plat shall be recorded until the Recorder has verified that all fees relative to the project have been paid, including the final engineering bills from the plat approval if applicable. The City Recorder shall deliver the fully executed plat and the declaration and covenants to the Box Elder County Recorder for recording.

1.21.5 Effect of Approval

In approving the plat, the Town and its officers and agents are only certifying to substantial compliance with the statute and ordinances regarding the recording of plats and the prior approval of the project as being in compliance with local zoning ordinances. The Town does not make any representation concerning the accuracy of the information presented in the plat drawn by the developer, nor the value of the project.

1.22 Nonconforming Uses and Noncomplying Structures

1.22.1 Except as provided in this section, a nonconforming use or noncomplying structure may be continued by the present or a future property owner.

1.22.2 A nonconforming 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.

1.22.3 For purposes of Subsection (1.22.2), the addition of a solar energy device to a building is not a structural alteration.

1.22.4 Anonconforming use of land may not be extended beyond that portion of land that is in use for such purpose at the time it became nonconforming.

1.22.5 Anonconforming use that is abandoned shall thereafter be prohibited.

1.22.6 Reconstruction or restoration of a noncomplying structure, or for a structure that is occupied with a nonconforming use that is voluntarily or involuntarily destroyed, in whole or in part, shall be permitted unless the structure or use has been abandoned. Reconstruction is permitted within the same footprint of the original structure, but may be repositioned to more closely comply with front, side and rear setbacks.

1.22.7 Reconstruction of a noncomplying residential structure that is voluntarily destroyed is permitted. In no case shall the side yard or back yard be less than 10 feet from the property line; nor shall the set back from the front property line be less than 20 feet.

1.22.8 Subject to the provisions of this code, a conditional use permit may be granted to allow the expansion of a noncomplying structure if the following standards are met:

- (a) That granting the expansion will not adversely impact the attainment.
- (b) That the expansion will improve the general appearance or safety of the area.
- (c) That by expanding the building, the character of the neighborhood is not adversely impacted.
- (d) That the expansion will improve the area by providing additional or adequate parking.
- (e) That any expansion will be adequately screened or buffered, if needed, so as not to increase impacts to the adjoining properties.
- (f) Notwithstanding the above standards (a-e), an existing single family dwelling, non-conforming as to side yard requirements but having a minimum side yard of not less than three feet may be extended in depth along the non-complying building line to a maximum of one-half the length of the existing dwelling if such extension is for the purpose of enlarging and maintaining the existing dwelling or required parking and provided such enlargement does not increase any other non-conformity which may exist and conforms to all other regulations of the zone in which it is located.

1.22.9 The nonconforming use of a structure shall be terminated if:

- (a) The 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 nonconforming use will be lost if the structure is not repaired or restored within six months; or
- (b) The property owner has voluntarily demolished a majority of the building that houses the nonconforming use.

1.22.10 The property owner shall have the burden of establishing the legal existence of a noncomplying structure or nonconforming use.

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

1.22.12 Abandonment may be presumed to have occurred if:

- (a) 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 ;
- (b) the use has been discontinued for a minimum of one year; or
- (c) the primary structure associated with the nonconforming use remains vacant for a period of one year.

1.22.13 The property owner may rebut the presumption of abandonment under Subsection (1.22.11), and shall have the burden of establishing that any claimed abandonment under Subsection (1.22.11) has not in fact occurred.

1.22.14 If a nonconforming use is vacated, it may be succeeded by an equally restrictive or more restrictive nonconforming use provided such change is effected within twelve (12) months. After a change to a more restrictive use is in effect that change shall be evidence that the less restrictive nonconforming use has been abandoned and thereupon loses any vested right as such, and the degree of nonconformity may not subsequently be increased by changing back to a less restrictive use.

1.23 Repealer, Savings Clause and Continuation Of Prior Ordinances

1.23.1 The 1979 Bear River City Land Development Code

The Bear River City Land Development Code of 1979 is hereby amended and re-codified in its entirety to read as herein provided by this Bear River City Land Management and Development Code.

1.23.2 Continuation of Prior Ordinances

The amendment of all zoning and/or development ordinances heretofore enacted by the Town of Bear River City shall not:

- (a) Affect suits pending or rights of the Town existing immediately prior to the effective date of this ordinance.
- (b) Impair, void, or affect any grant or conveyance made or right acquired or cause of action as of the effective date of this Code or now existing.

1.23.3 Continuation of Similar Provisions

The provisions of this ordinance insofar as they are the same or substantially the same as any prior ordinances shall be construed as a continuation of the prior ordinance.

1.23.4 Severability

If any phrase, clause, sentence, paragraph, or section of this Code shall be declared unlawful by any court of competent jurisdiction, such decision shall not affect any of the remaining phrases, clauses, sentences, paragraphs, and sections of this Code.

1.23.5 Effective Date

This Ordinance shall become effective March 5, 1998.

1.24 Conflicts Within the Code

Every effort is made by the Town to insure that this code is readable, understandable, and contains as few defects as possible. If however, any conflicts, defects, inconsistencies or ambiguities are found within different sections and/or chapters of this code, the Planning Commission shall follow the section or wording that is more restrictive, stringent or of a higher standard as defined or interpreted by the Planning Commission.

The Planning Commission shall then make every effort to amend the code to further clarify or repair the defect, conflict, inconsistency or ambiguity.