

# TITLE 15 - Land Use Regulations

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## Huntsville Town Ordinance – Title 15.5 Land Use Authorities and Appeals

### **15.5 APPEAL AUTHORITY<sup>1</sup>**

- 15.5.1 Planning Commission
- 15.5.2 Land Use Authority
- 15.5.3 Appeal and Variance Authority

#### **15.5.1 Planning Commission**

1. Establishment. In accordance with Utah Code Annotated §10-9a-301, Town hereby establishes the Planning Commission subject to this section.
2. Membership. The Planning Commission is composed of five (5) members and may include one alternate who shall be residents, and registered voters, of the Town duly appointed by the mayor, subject to the advice and consent of the Town Council. The alternate will be invited to all meetings and if one of the five members is absent, the alternate can vote.
3. Term. Each member of the Planning Commission shall serve a term of three (3) years. Terms may be staggered. Members may be reappointed.
4. Vacancy. Any Planning Commission vacancy is filled for a three (3) -year term by appointment of the mayor, subject to the advice and consent of the Town Council.
5. Removal. A member may be removed for missing sixty (60) percent of the meeting during a calendar year, or by majority vote of the Town Council.
6. Powers and Duties. The Planning Commission shall only exercise the powers and duties set forth in Utah Code §10-9a-302, and as follows:
  - a. Recommendation. Review and make a recommendation to the legislative body for:
    - i. A general plan and amendments to the general plan.
    - ii. Land use regulations, including:
      1. Ordinances regarding the subdivision of land.
      2. Amendments to existing land use regulations.
  - b. Decision. The Planning Commission shall hear and decide all land use applications, subject to review by the Town Council.

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<sup>1</sup> Amended 8-23-2023: Ordinance #2022-5-22 repealed 15.3.4 "Planning Commission." It also repealed 15.5 "Appeal Authority" and reenacted 15.5 as "Land Use Authorities and Appeals."

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- c. Review. The mayor or any member of the Town Council may request to review a decision by the Planning Commission by filing a written request with the Town Clerk within ten (10) days of any decision. The Town Council by majority vote may amend, modify, approve, or deny a land use application under review by the Town Council.
7. Presiding Officer. One member will be appointed by the mayor with the advice and consent of the Town Council to serve as the Chairperson.
8. Quorum. A quorum of the Planning Commission consists of three (3) members present at a public meeting. A decision of the Planning Commission based upon the majority vote of the quorum present and voting at the public meeting. Each member present at a meeting shall vote on an issue, yea or nay, except when a member declares a conflict of interest. A tie vote fails, or is deemed to be a negative recommendation, as the case may be.
9. Rules. The Planning Commission shall follow the Rules of Procedure and Order adopted by the Town Council.
10. Compensation. The mayor may fix per diem and compensation as established by the Town Council.

### **15.5.2 Land Use Authority**

1. Appointment. In accordance with Utah Code § 10-9a-302(1)(c), the mayor, subject to the advice and consent of the Town Council may appoint an Administrative Hearing Officer as the Land Use Authority to review and approve routine and uncontested land use applications, including:
  - a. Land Use Permits (including accurate site plans)
  - b. Conditional Use Permits
  - c. Subdivisions of three (3) lots or less in accordance with Utah Code §10-9a-605, notwithstanding a plat and compliance with Chapter 15.25 is required.
2. Qualification. The individual appointed should have qualified experience in land use as a professional surveyor, attorney, civil engineer, educator, or other land use related field.
3. Applicability. The administrative Hearing Officer shall serve until removed by the Town Council or a successor is appointed. In the event that an Administrative Hearing Officer is not appointed, or in the event an application is contested, the Planning Commission is hereby designated as the Land Use Authority.

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4. Standard. A land use decision is an administrative act and shall be made in accordance with Utah Code §10-9a-306.
5. All decisions made by the Administrative Hearing Officer will be presented to the Planning Commission at the next available meeting by report.
6. Contested. A land use application is only deemed contested if an adversely affected party files a written contest with the Town Clerk on a complete land use application duly filed with the Town under this Section within fifteen (15) days after the presentation to the Planning Commission.
7. Compensation. The mayor may fix per diem and compensation as established by the Town Council.

### **15.5.3 Appeal and Variance Authority**

1. Establishment. In accordance with Utah Code §10-9a-701, the mayor, subject to the advice and consent of the Town Council may appoint an Appeal and Variance Authority to hear and decide the appeal of any land use applications decided by the Planning Commission or Town Council.
2. Appointment. The mayor shall appoint an individual, including alternates, as the Appeal and Variance Authority subject to the advice and consent of the Town Council.
3. Qualification. The individual appointed should have qualified experience in land use as a professional surveyor, attorney, civil engineer, educator, or other land use related field.
4. Compensation. The mayor may fix per diem and compensation as established by the Town Council.
5. Authority. The Appeal and Variance Authority is quasi-judicial and serves as the final arbiter of issues involving the interpretation or application of the municipal code in the course of hearing and deciding all appeals, including:
  - a. Appeals set forth in Utah Code 10-9a-701 (1)(b).
  - b. Variances in accordance with Utah Code §10-9a-702.
  - c. Appeals regarding geological hazards shall be administered in accordance with Utah Code §10-9a-703.
  - d. Any other appeal specified in the municipal code.

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6. Time. In accordance with Utah Code §10-9a-704, a written appeal of any land use decision shall be filed with the Town Clerk within thirty (30) calendar days of the decision issued by the land use authority. An applicant present at a meeting where a decision is made is presumed to have actual notice of the decision which shall be deemed as the commencement of the thirty (30) calendar day appeal period.
7. Burden. In accordance with Utah Code §10-9a-705, the appellant has the burden of proving error.
8. Due process. Due process is afforded in accordance with Utah Code §10-9a-706.
9. Scope. Subject to the scope set forth in Utah Code §10-9a-707, the standard of review for the appeal authority is as follows:
  - a. For factual matters, the Appeal and Variance Authority may review the matter de novo.
  - b. The Appeal and Variance Authority shall determine the correctness of a decision of the Land Use Authority in its interpretation and application.
  - c. An appeal may be made where a Land Use Authority has applied a land use regulation to a particular application, person, or parcel.
  - d. All other standards for making it shall be based upon the preponderance of the evidence.
  - e. The appealing party is limited in raising claims only to those claims that were initially raised at the time the decision was made upon the land use application.
10. Final Decision. The Appeal and Variance Authority shall issue a final decision in accordance with Utah Code §10-9a-708.
11. District Court. No person may challenge in district court any land use decision of the Town until that person has complied with Utah Code §10-9a-801, and otherwise exhausted all administrative remedies and in accordance with Utah Code §10-9a-701(2). The following apply:
  - a. No adversely affected parties shall present a theory of relief in district court that was not first presented to the appeal authority.
  - b. Adversely affected parties are precluded from pursuing duplicate or successive appeals before the same or separate appeal authorities as a condition of the adversely affected party's duty to exhaust administrative remedies.
  - c. The Appeal and Variance Authority may provide that a matter be appealed directly to the district court.