

**Elwood Town, Utah**  
**Title 10 – Zoning Ordinance**

**CHAPTER 10.04**  
**ADMINISTRATIONS**

**Sections:**

- 10.04.010 Land Use Authority
- 10.04.020 Appeal Authority
- 10.04.030 Administration of City's Land Use Ordinances

**10.04.010 Land Use Authority**

The decision making bodies and officials identified within this Ordinance shall have responsibilities for implementing and administering the Elwood Town General Plan and the Elwood Town's Land Use Ordinance, which include the Town's Zoning Ordinance, Subdivision Ordinance, and other Ordinances, as allowed by State law, and as contained in §10-9a *et. seq.* UCA, as amended.

- A. Town Council - The Elwood Town Council ("Council") shall have the following powers and duties under this Ordinance:
  - 1. To adopt, and to initiate amendments to the Elwood Town General Plan, and all elements of the General Plan.
  - 2. To adopt, and to initiate amendments to the Elwood Town Zoning Ordinance.
  - 3. To adopt, and to initiate amendments to the Elwood Town Subdivision Ordinance.
  - 4. To appoint a hearing officer to render a recommendation to the Council if an applicant asserts a deprivation of, or has been subject to, a taking of property without just compensation, or asserts some other constitutional invalidity, as provided by herein.
  - 5. To establish a fee schedule by resolution for all approvals, permits and licenses required by this Ordinance, as provided herein.
  - 6. To take such other action(s) not expressly delegated to the Planning Commission, the Appeal Authority, or the Town Staff.
- B. Decisions Final on Meeting Date, Exceptions. All decisions of the Council, made under this Ordinance, shall take effect on the date of the meeting when the decision is made, unless a different date is designated at the time the decision is made. The minutes of all meetings of the Council shall be filed in the office of the City Recorder. All such records shall be available for public review and access in accordance with the Government Records and Access Management Act, §63-2-101 *et. seq.* U.C.A., as amended.
- C. Planning Commission
  - 1. Creation, Composition. Appointment of Members. Expenses. - There is hereby created a planning commission within and for the Town, to be known as the Elwood Town Planning Commission. The Commission shall consist of seven (7) members and one (1) alternate members to be appointed by the Mayor, with the consent of the Council, from among residents of the City. Members shall be selected without respect to political affiliations and shall serve without compensation, except for reasonable expenses as determined by the Mayor with the consent of the Council. The Mayor shall also appoint a Town Councilmember to serve as a liaison between the Planning Commission and Town Council
  - 2. Powers and Duties: The planning commission shall have the power and duties in accordance with the Land Use Development and Management Act section §10-9a-204 *et. seq.* U.C.A., as amended and the following:
    - a. The Commission shall be an advisory body to the Council on legislative matters pertaining to the General Plan, the land Use Ordinances of the Town. The Commission shall have the following powers and duties:
    - b. To prepare, or cause to be prepared, the proposed Elwood Town General Plan, any proposed plan element, any amendments thereto, and to submit the proposed plan, element or amendments to the Council.
    - c. To prepare or cause to be prepared the proposed Elwood Town Zoning Ordinance, any amendments thereto, and to submit the Ordinance or amendments thereto to the Council.

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- d. To prepare or cause to be prepared the proposed Elwood Town Subdivision Ordinance, any amendments thereto, and to submit the Subdivision Ordinance or amendments thereto to the Council.
  - e. To hear, review and recommend approval or denial of all Applications for a General Plan Amendment, Zoning Ordinance Amendment, or Zoning Districts Map Amendment (Rezone).
  - f. To hear, review, and approve, approve with revisions, or deny a Site Plan Application, for a Permitted Use proposing new construction of a building(s), or proposing any structural modifications to the exterior of an existing building(s) as authorized by this Ordinance, excluding Single-Family and Two-Family Dwellings.
  - g. To hear, review, and approve, approval with conditions, or denial of a Conditional Use Application, including a Site Plan for a Conditional Use.
  - h. To hear, review, and recommend approval or denial of Subdivision Applications to the Council, as authorized by the Elwood Town Subdivision Ordinance.
  - i. Advise the Council on all other matters as the Council may direct.
3. Terms of Office of Members of Planning Commission. Vacancies. Removal of Members: The terms of office of the original appointive members shall be two and four years; four shall be appointed for two years, and four shall be appointed for four years. Thereafter the terms of office for each appointive member shall be four years. Vacancies occurring otherwise than through the expiration of terms shall be filled by appointment by the Mayor, with the consent of the Town Council. Members may be removed after public hearing by a majority vote of the Town Council for causes established within the rules of the Planning Commission or by a recommendation of the Mayor.
4. Chairman of Planning Commission. Rules: Record of Proceedings: The Planning Commission shall elect annually, a chairperson, during the first regularly held meeting in each new calendar year. The chairperson will be elected from among the members of the Planning Commission by a majority of the total membership. The Mayor shall appoint a vice-chairperson who will be named at the following regularly scheduled Planning Commission meeting. A chairperson shall serve for not more than two consecutive terms and shall only vote in the event of a tie vote. In the event of a vacancy of the Chairperson's position, prior to the expiration of the chairperson's term or any prior vacancy, a new chairperson shall be elected whenever a previously appointed vice chairperson position becomes vacant, the Mayor shall appoint a new vice chairperson. The Planning Commission shall establish and adopt bylaws or rules of procedure governing the conduct of meetings and operation of the Planning Commission. Upon adoption of these rules, they shall be submitted to the City Council for final approval and adoption by resolution. The Planning Commission, upon its own initiative, may amend the bylaws or rules of procedure, and thereafter, such amendments shall be submitted to the Town Council for final approval and adoption by resolution. It shall also keep a public record of its proceedings.
5. Removal of Member from Office:

**10.04.020 Appeal Authority**

The Elwood Town Appeal Authority shall consist of five (5) members and whatever number of alternate members that the Mayor considers appropriate, each to be appointed by the Mayor for the term of five years, provided that the term of one member shall expire each year. Any member or alternate member may be removed for cause by the appointing authority upon written charges and after a public hearing if such public hearing is requested. Vacancy shall be filled for the unexpired term of any member or alternate member whose term becomes vacant.

**A. Organization and Meetings**

1. The Appeal Authority shall adopt bylaws for the regulation of its procedure and the conduct of its duties not inconsistent with the provisions of this title or of the Utah Code. Such bylaws, to become effective, shall first be approved by the Town Council.
2. Decisions of the Appeal Authority shall become effective at the meeting in which the decision is made, unless a different time is designated in the Appeal Authority's rules.

**B. Powers and Duties: The Appeal Authority shall have the following powers:**

1. Appeals – Hear and decide appeals from any order, requirement, determination or decision of the Land Use Authority and/or Town Staff's application of the City's Land Use Ordinances. An appeal may not be used to waive or modify the terms or requirements of the City's Land Use Ordinances.
2. Special Exceptions – Hear and decide special exceptions to the terms of the zoning ordinance where the Town Council has granted jurisdiction to the Appeal Authority to do so. The Appeal Authority may hear and

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decide special exceptions only if authorized to do so by the zoning ordinance and based only upon the standards contained in the zoning ordinance.

3. Variances – Hear and decide all applications for variance from the terms of the zoning ordinance other than allowing a use variance. Such decisions shall be made in accordance with State law, Section 10.02.060 of this Chapter, and the rules adopted by the Appeal Authority.
4. Nonconforming Use – Hear and make determinations regarding the existence, expansion, or modification of nonconforming uses.

C. Town Staff's Determinations.

The Town Staff may decide certain matters as designated by the Appeal Authority, and consistent with guidelines established by this Chapter, the Utah Code, and the rules adopted by the Appeal Authority. Pursuant to this authority, the Town Staff may decide all cases which are routine in nature, uncontested, do not impact on the character of the neighborhood, are primarily brought about by recent changes in the Zoning Ordinance creating a large number of nonconforming structures or uses, and which the Appeal Authority has granted on an almost routine basis. The specific types of decisions the Town Staff is authorized to make shall include:

1. Determination of a nonconforming use which can be verified by substantial evidence. Substantial evidence, for the purpose of this Section, shall mean official documents, including any written correspondence, receipts, permits, or documents issued by a public body or agency thereof, etc., that may establish the truth of the matter asserted by the applicant.
2. Consider additions or alterations to existing buildings and structures which are nonconforming as to height, area, or yard regulations provided the addition follows the existing wall lines and no additional dwelling units are added to the building or structure.
3. Change in status of a nonconforming use to an equally intensive or a less intense use than that immediately preceding the proposed use.
4. Final review and approval on plans where the Appeal Authority has required that a final plan be submitted for special approval, showing that all the requirements imposed by the Appeal Authority in granting the original approval have been complied with. All decisions of the Town Staff made under this section may be appealed to the Appeal Authority.

D. Appeals to the Appeal Authority

Appeals may be made to the Appeal Authority by the Town, the applicant, or any other person or entity adversely affected by a zoning decision administering or interpreting a Zoning Ordinance. All appeals shall be made as follows:

1. The appeal shall be made within thirty (30) days of the action or decision being appealed from by filing a notice of appeal with the Appeal Authority with the Town Staff.
2. The notice of appeal shall specify the grounds for the appeal and circumstances related thereto. The notice shall allege that there was error in the order, requirement, decision, or determination made by an official or officials in the administration or interpretation of the zoning ordinance. A notice failing to allege such error or specifying the grounds for appeal may be summarily dismissed by the Appeal Authority with or without prejudice. Response to the above requirements shall be set forth in detail in the notice of appeal. The person or entity making the appeal shall have the burden of proving that an error has been made.
3. All papers constituting the record upon which the action appealed from was made shall be transmitted to the Appeal Authority.
4. The Appeal Authority shall set the appeal for hearing to be held within a reasonable time from the date the appeal is received. Written notice of the date set for hearing the appeal shall be mailed to the applicant at least seven days before the appeal hearing date. After hearing the appeal, the Appeal Authority may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from and may make such order, requirement, decision, or determination as ought to be made, and to that end shall have all the powers of the officer or body from which the appeal is made.
5. The filing of an appeal shall stay all proceedings and actions in furtherance of the matter appealed, pending a decision of the Appeal Authority. Said stay shall exist unless the Planning Commission or Town Staff certifies to the Appeal Authority, after the notice of appeal shall have been filed, that by reason of facts stated in the certificate, the stay would cause imminent peril to life or property. In such case, proceedings shall not be stayed otherwise than by restraining order which may be granted by the District Court on application, notice, and due cause shown.
6. The concurring vote of three members of the Appeal Authority shall be necessary to reverse any order, requirement, decision, or determination of any administrative official, planning commission, or agency, or to decide in favor of the appellant.

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7. The Town, or any person adversely affected by any decision of the Appeal Authority, may petition the district court for a review of the decision, provided the petition is filed with the Court within 30 days after the Appeal Authority's decision is final. In the petition, the appealing party may only allege that the Appeal Authority's decision was arbitrary, capricious, or illegal. The Appeal Authority may, after finding that it is in the best interest of the Town to do so, stay its decision pending district court review.

**E. Variances.**

1. **Definitions.** A variance is a device which grants a property owner relief from certain provisions of the zoning ordinance when, because of the particular physical surroundings, shape, or topographical conditions of the property, compliance would result in a particular hardship upon the owner, as distinguished from a mere inconvenience or a desire to reduce financial difficulties.
2. **Variance Criteria.** Unless otherwise provided in this Title, the Appeal Authority may grant a variance from the requirements of any provision of the zoning ordinance to the extent that such a grant shall be consistent with the provisions of this Section. Notwithstanding, the spirit of this Title must be observed and substantial justice done. Further, a previous variance can never set a precedent. Each case must be considered only on its individual merits. The Appeal Authority may grant a variance only if:
  - a. Literal enforcement of the zoning ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the zoning ordinance; and
  - b. There are special circumstances attached to the property that do not generally apply to other properties in the same zoning district; and
  - c. Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zoning district; and
  - d. The granting of the variance will not substantially affect the general plan and will not be contrary to the public interest; and the spirit of the zoning ordinance is observed and substantial justice done
3. In determining whether or not enforcement of the zoning ordinance would cause unreasonable hardship under this section, the Appeal Authority may not find an unreasonable hardship unless the alleged hardship:
  - a. Is located on or associated with the property for which the variance is sought; and
  - b. Comes from circumstances peculiar to the property, not from conditions that are general to the neighborhood
4. In determining whether or not enforcement of the zoning ordinance would cause unreasonable hardship under this section, the Appeal Authority may not find unreasonable hardship if the hardship is self-imposed or economic
5. In determining whether or not there are special circumstances attached to the property under this section, the Appeal Authority may find that special circumstances exist only if the special circumstances:
  - a. Relate to the hardship complained of; and
  - b. Deprive the property of privileges granted to other properties in the same district.
6. The applicant shall bear the burden of proving that all of the conditions justifying a variance have been met.
7. Variances, once granted, shall run with the land.
8. Use variances may not be granted by the Appeal Authority or by any other body.
9. In granting a variance, the Appeal Authority may impose additional requirements on the applicant that will:
  - a. Mitigate any harmful effects of the variance; or
  - b. Serve the same or similar purpose of the standard or requirement that is waived or modified.

**10.04.030 Administration of City's Land Use Ordinances**

This Section shall establish duties and responsibilities for the Town Staff and other city officials and agencies, with respect to the administration of the City's Land Use Ordinance.

**A. Town Staff**

The duties of the Town Staff shall be as follows:

1. **Reviews and Approvals.** The Town Staff shall be authorized to undertake reviews, recommendations and approvals as described in Section 10.20.050 of this Title.

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2. General Plan. The Town Staff shall assist the Planning Commission in the development and implementation of the General Plan for the physical and economic growth of Elwood Town, and shall prepare population and growth studies in support of the General Plan.
  3. Administrative Staff Assistance and Technical Advice. The Town Staff shall provide staff assistance to the Planning Commission and Appeal Authority. Staff assistance shall include attendance at regularly scheduled meetings and the preparation and publication of agendas. The Town Staff shall act as technical advisor to the Mayor, City Council, and other City departments upon request, and other committees and commissions as the council may designate.
- B. Delegate Responsibility. The Town Staff may appoint authorized representatives to execute the responsibilities as described above.
- C. Administrative Reviews And Permits
1. Review for Building Permits. The Chief Building Official shall submit all applications for building permits to the Town Staff for review. Such review shall assure compliance with the regulations of this Code. The application for a building permit shall be accompanied by set of building plans, a plot plan showing lot lines and dimensions, locations of structures and improvements, requirements, building height limitations, and all data necessary to show that all yard requirements and other provisions of this Code are met. The Chief Building Official shall issue no building permit until the application is approved for zoning compliance by the Town Staff.
  2. Review for Business Licenses. The Town Staff shall also review and approve all applications for business licenses, or renewal of such licenses, to assure compliance with this Code.
  3. Site Plan Review. The Town Staff shall receive all applications for Site Plan Review, as provided for in Section 10.06.050 of this Title. The Town Staff shall receive all submittals, assure completeness, and prepare submittals for review.
  4. Conditional Use Permit. Applications for Conditional Use Permit shall be submitted to the Town Staff as provided for in Section 10.06.070 of this Title. The Town Staff shall receive all submittals, assure completeness of submittals, and prepare submittals for review by the Planning Commission.
  5. Temporary Use Permit. Applications for Temporary Use Permit shall be received by the Town Staff and follow the procedure as described in Section 10.06.110 of this Title.
  6. Amendments. Requests for amendments or changes to the Town's Land Use Ordinances or Zoning Map shall be initiated with the Town Staff.
  7. Interpretation. The Town Staff shall be responsible for interpretation of the City's Land Use Ordinances and the Zoning Map. An appeal of the Supervisor/City Planner's interpretation may be made to the Town's Appeal Authority as provided for elsewhere in this Section 10.04.020(1) of this Title.
  8. Home Occupation License Review. The Town Staff shall review and make recommendations for Home Occupation License.
  9. Sign Permit. As provided in Section 10.23, Sign Regulations, the Town Staff shall be responsible for issuance of permits for signs, and for enforcement of sign regulation.

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