

**ORDINANCE NO. 1199**

**AN ORDINANCE OF THE DRAPER CITY COUNCIL  
AMENDING SECTIONS OF THE DRAPER CITY CODE  
PERTAINING TO APPEALS OF LAND USE DECISIONS**

**WHEREAS**, State law requires cities to establish one or more appeal authorities to hear and decide requests for variances, appeals from decisions applying the land use ordinance, and appeals from a fee.; and

**WHEREAS**, the City has adopted a robust appeals process that complies with state law; and,

**WHEREAS**, the Text Amendments address how time is computed when calculating the time to file an appeal; the different appeal bodies and their authority; procedural items associated with appeals; and conform Title 9 to the requirements of state law; and

**WHEREAS**, the Text Amendments comply with state law and meet the goals and objectives of the General Plan and zoning ordinance as found in Sections 9-5-060(e)(2) of the Draper City Municipal Code; and

**WHEREAS**, the Planning Commission considered the Text Amendments at its May 12, 2016 meeting and has forwarded a positive recommendation to the City Council.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF DRAPER CITY, STATE OF UTAH, AS FOLLOWS:**

**Section 1.** Approval. The City Council hereby amends Chapters 2-4, 3-1, 9-3, 9-4, and 9-5 of the Draper City Municipal Code to read as shown in Exhibit "A" which is attached hereto and incorporated herein by reference.

**Section 2.** Severability. If any section, part, or provision of this Ordinance is held invalid, or unenforceable, such invalidity or unenforceability shall not affect any other portion of this Ordinance, and all sections, parts, and provisions of this Ordinance shall be severable..

**Section 3.** Effective Date. This ordinance shall become effective immediately upon publication or posting or 30 days after final passage, whichever is closer to the date of final passage.

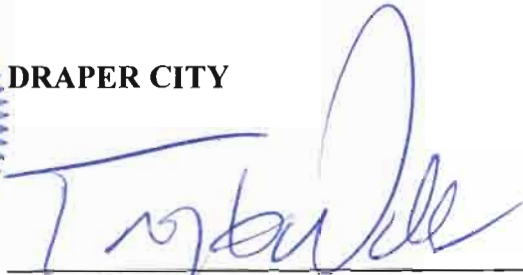
**PASSED AND ADOPTED BY THE CITY COUNCIL OF DRAPER CITY, STATE OF UTAH, THIS THE 17<sup>th</sup> DAY OF MAY, 2016.**

**ATTEST:**



**DRAPER CITY**

  
Rachelle Conner, City Recorder

  
Mayor Troy K. Walker

**EXHIBIT A**

## Chapter 2-4 LEGISLATION

### Sections:

<u>2-4-010</u>	<u>Ordinances.</u>
<u>2-4-020</u>	<u>Resolutions.</u>
<u>2-4-030</u>	<u>Regulations.</u>
<u>2-4-040</u>	<u>Public Records.</u>
<u>2-4-050</u>	<u>Rules of Construction.</u>
<u>2-4-060</u>	<u>Constitutional Taking Issues.</u>

### Section 2-4-060      **Constitutional Taking Issues.**

(a) Purpose. The purpose of this Section is to provide advisory guidelines for the City to assist the City in identifying actions that involve physical taking or exaction of private real property that may have constitutional taking issues.

(b) Definitions. As used herein:

(1) "Constitutional taking issues" means actions involving the physical or exaction of private real property by the City that might require compensation to a private real property owner under:

(i) The Fifth or Fourteenth Amendment of the Constitution of the United States;

(ii) Article I, Section 22 of the Utah Constitution; or

(iii) Any recent court rulings governing the physical or regulatory taking of private real property by a governmental entity.

(c) Guidelines. The following guidelines shall be considered by the City when taking any action that might result in the physical or exaction of private real property.

(1) Identification. The City should review the following to determine and identify whether a proposed governmental action raises constitutional taking issues.

(2) Does the action result in a permanent physical occupation of private property?

(3) Does the action require a property owner to dedicate property or grant an easement to the City?

(4) Does the action deprive the property owner of all economically viable uses of the property?

(5) Does the action have a severe impact on the property owner's economic interest?

(6) Does the action deny a fundamental attribute of ownership?

(d) Analysis. If the City determines that a governmental action involves constitutional taking issues, the proposed action should be reviewed by the City to analyze the possible taking and to determine the action to be taken. In reviewing the proposed action, the following factors may be analyzed.

(1) The affect the potential taking would have on the use or value of the private property;

(2) The likelihood that the action may result in a constitutional taking;

(3) Any alternatives to the proposed action that would fulfill the City's lawful objectives and reduce the risk of a constitutional taking;

(4) The cost to the City for payment of compensation if a taking is determined;

(5) The governmental interest involved and its nexus to the potential taking; and

(6) If the action is roughly proportionate or reasonably related to the impact of any proposed development.

(e) Appeals. Any owner of private property whose interest in the property is subject to a physical or exaction by the City, pursuant to a final and authoritative decision or action of the City, may appeal the City's decision or action by filing a written notice of appeal and statement of the grounds for the appeal in the City Recorder's Office within thirty (30) days from the date of the City's decision or action. The City Council or its designee shall hear all evidence regarding the appeal and render its decision and findings in writing within fourteen (14) days from the date the appeal was filed. If the City fails to hear and decide the appeal within fourteen (14) days, the City's decision or action is presumed to be approved.

(f) Limitations. The guidelines set forth herein are advisory only and shall not be construed to expand nor limit the scope of the City's liability for a constitutional taking. The City shall have no legal liability to any person, firm or entity of any nature whatsoever and a court may not impose liability upon the City for failure to comply with the provisions of this Chapter. The private property owner need not file the appeal authorized by this Section before bringing an action in any court to adjudicate claims that are eligible for appeal. A property owner's failure to appeal the action of the City does not constitute, and may not be interpreted as constituting, a failure to exhaust administrative remedies or as a bar to bringing legal action.

## Title 2 Chapter 4 Code Amendments

Amended 2-4-010

per Ordinance 962

02-01-2011

### **Chapter 3-1 DEPARTMENTS AND DIVISIONS**

#### **Sections:**

<u>3-1-010</u>	<u>Department Creation.</u>
<u>3-1-020</u>	<u>Interdepartmental Cooperation.</u>
<u>3-1-030</u>	<u>Department Heads.</u>
<u>3-1-040</u>	<u>Additional Employment.</u>
<u>3-1-045</u>	<u>Assistant City Manager</u>
<u>3-1-050</u>	<u>Police Department.</u>
<u>3-1-055</u>	<u>Police Chief.</u>
<u>3-1-060</u>	<u>Fire Chief.</u>
<u>3-1-066</u>	<u>Recreation Department.</u>
<u>3-1-067</u>	<u>Recreation Director.</u>
<u>3-1-068</u>	<u>Finance Department.</u>
<u>3-1-069</u>	<u>Finance Director.</u>
<u>3-1-070</u>	<u>Public Works Department.</u>
<u>3-1-080</u>	<u>Public Works Director.</u>
<u>3-1-085</u>	<u>City Engineer.</u>
<u>3-1-090</u>	<u>Community Development Department.</u>
<u>3-1-100</u>	<u>Community Development Director.</u>
<u>3-1-110</u>	<u>Water Department.</u>
<u>3-1-120</u>	<u>Planning Commission.</u>
<u>3-1-130</u>	<u>Appeals and Variance Hearing Officer.</u>
<u>3-1-140</u>	<u>Redevelopment Agency.</u>
<u>3-1-150</u>	<u>Boards and Committees.</u>
<u>3-1-160</u>	<u>General Rules for Boards and Committees.</u>
<u>3-1-170</u>	<u>Draper City Arts Council (Repealed)</u>
<u>3-1-180</u>	<u>Draper City Historic Preservation Commission.</u>
<u>3-1-190</u>	<u>Draper City Parks, Trails and Recreation Committee.</u>
<u>3-1-200</u>	<u>Draper City Equestrian Center Advisory Board.</u>
<u>3-1-210</u>	<u>Repealed.</u>
<u>3-1-220</u>	<u>Repealed.</u>
<u>3-1-230</u>	<u>Draper City Tree Commission.</u>
<u>3-1-240</u>	<u>Repealed.</u>
<u>3-1-250</u>	<u>Draper City Youth Council Advisory Board</u>
<u>3-1-260</u>	<u>Draper City Police Citizen's Advisory Board.</u>



<u>3-1-270</u>	<u>Draper City Emergency Preparedness Committee</u>
<u>3-1-270.5</u>	<u>Draper City District Representative Program for Emergency Communications</u>
<u>3-1-280</u>	<u>Draper City Planning Commission</u>
<u>3-1-290</u>	<u>Traverse Ridge Special Service District Administrative Control Board</u>

**Section 3-1-280 Planning Commission.**

(a) Composition and Appointment. The Planning Commission shall be comprised of six regular members appointed by the Mayor with the advice and consent of the City Council.

(b) Terms. Members shall be appointed to staggered four-year terms but may be appointed to shorter terms when necessary to provide for staggered terms. Members may be reappointed for successive terms.

(c) Alternates. In addition to the six members of the Planning Commission, the Mayor shall appoint alternates to the Planning Commission with the advice and consent of the City Council. Alternates shall serve one-year terms or until appointed to fill a vacancy on the Planning Commission. Alternates may be reappointed for successive terms.

(d) Removal. The Mayor may remove any member or alternate of the Planning Commission with the advice and consent of the City Council.

(e) Vacancy. A vacancy occurring on the Planning Commission by reason of death, resignation, removal or disqualification, shall be promptly filled by a replacement appointed by the Mayor with the advice and consent of the City Council for the unexpired term of the replaced member.

(f) Per Diem. Regular and Alternate members of the Planning Commission shall be paid per diem compensation for reasonable and necessary expenses for meetings actually attended, in an amount of \$50.00.

(g) Status. Members and Alternates shall be deemed "volunteers" for purposes of City ordinances, rules, regulations and policies concerning personnel. However, they shall be included in the definition of "employee" for purposes of the Utah Governmental Immunity Act as set forth in Utah Code Ann. §63-30-1, et seq., as amended.

(h) Powers. The Planning Commission shall be organized and exercise its powers and duties as follows:

(1) The Planning Commission shall elect one of its members as chairperson to oversee the proceedings and activities of the Planning Commission. The chairperson shall vote only in the event of a tie or when needed to establish a quorum. The chairperson shall serve for a term of one year. The Planning Commission shall elect one of its members as vice-chairperson to act as

chairperson in the absence of the chairperson or because of the chair's inability or refusal to act. The vice-chairperson, acting as the chairperson, shall have the power to vote on all matters.

(2) The Planning Commission may adopt reasonable policies and procedures governing the conduct of its meetings, the processing of applications, and for any other purposes considered necessary for the functioning of the Planning Commission. Such policies and procedures shall be approved by the City Council before taking effect.

(3) The Planning Commission shall meet according to the schedule adopted each year by the City Council, and/or such other times as deemed necessary by the chairperson or City Council. All meetings shall be properly noticed and held in accordance with the open meetings law set forth in Chapter 4, Title 52 of the Utah Code Annotated, as amended. Written minutes of all business meetings of the Planning Commission shall be prepared and filed in the office of the City Recorder for review and access by the public in accordance with the Draper City Government Records Access and Management Ordinance.

(4) No official business shall be conducted by the Planning Commission unless a quorum of its members or alternate members is present. Alternates shall be allowed to vote on official business of the Planning Commission when not all regular members of the Planning Commission are present. At no time shall more than five regular members or alternates and one chairperson participate in any official business of the Commission. Three members or alternates shall constitute a quorum. The minimum number of yes votes required for the Planning Commission to take any action shall be three, unless otherwise prescribed by law.

(5) Alternates may fill vacancies occurring on the Commission or may be appointed to the Commission as regular members' terms expire.

(6) Alternates should attend planning retreats and educational meetings related to the obligations and duties of the office of planning commissioner as offered by the City, and attend joint meetings of the Planning Commission and City Council.

(i) Duties. It shall be the function of the Planning Commission to oversee the proper development of the City in accordance with pertinent City ordinances and provisions of Title 10, Chapter 9a of the Utah Code Annotated, as amended. The duties of the Planning Commission shall include:

(1) preparing and recommending a general plan and amendments thereto to the City Council;

(2) recommending zoning ordinances and maps, and amendments to zoning ordinances and maps, to the City Council;

(3) administering applicable provisions of Title 9;

(4) recommending subdivision ordinances and regulations and amendments thereto to the City Council;

(5) recommending approval or denial of subdivision applications;

(6) advising the City Council on matters requested by the City Council;

(7) hearing or deciding any matter that the City Council designates;

(8) preparing and recommending programs for public improvements and the financing thereof to the City Council; and

(9) exercising any other powers necessary to enable the Planning Commission to perform its function or that are delegated to it by the City Council.

(j) Examinations and Surveys. The Planning Commission and its authorized agents may enter upon any land at reasonable times to make examinations and surveys as necessary to enable it to perform its function to promote City planning and development.

(k) Appeals. Any interested person aggrieved of a final decision of the Planning Commission may appeal that decision by filing a written appeal stating the grounds within 14 days from the date of the decision or action to the Appeals and Hearing Officer or City Council as designated by ordinance.

## **Title 9 Land Use and Development Code for Draper City**

### **Chapter 9-3 RULES OF CONSTRUCTION AND DEFINITIONS**

#### **Sections:**

[9-3-010 Purpose](#)

[9-3-020 Scope](#)

[9-3-030 Rules of Construction](#)

[9-3-040 Definitions](#)

[9-3-050 Illustrations](#)

[9-3-060 Prohibited and Prescribed Uses](#)

**Section 9-3-010 Purpose.** The purpose of this Chapter is to provide rules of construction, definitions, and illustrations so that the provisions of this Title may be readily understood and consistently administered.



**Section 9-3-020 Scope.** The rules of construction, definitions, and illustrations contained in this Chapter shall apply to the entirety of this Title.

**Section 9-3-030 Rules of Construction.**

(a) General. All provisions, terms, phrases and expressions contained in this Chapter shall be liberally construed to accomplish the purposes of this Title.

(b) Computation of Time. Unless stated otherwise, a period of time specified in this Title shall be calendar days. The time within which an act is to be done shall be computed as by excluding the first day and including the last day. If the last day is a Saturday, Sunday, or holiday, then the last day shall be the next following business day. In computing the time required for public hearing notice, the day of the hearing shall be excluded.

(c) Conjunctions. Unless the context clearly indicates to the contrary, conjunctions shall be interpreted as follows.

(1) "And" indicates that all connected items, conditions, provisions or events shall apply.

(2) "Or" indicates that one or more of the connected items, conditions, provisions or events shall apply.

(3) "Either . . . or" indicates that the connected items, conditions, provisions or events shall apply singly but not in combination.

(d) Mandatory and Discretionary Terms. The word "shall" is always mandatory. The word "should" means the matter described ought to be accomplished if reasonable and possible under the circumstances. The word "may" is permissive.

(e) Non-Technical and Technical Words. Words and phrases shall be construed according to the common use and understanding of the language, but technical words and phrases and such others as may have acquired a peculiar and appropriate meaning in law shall be construed and understood according to such meaning.

(f) Tense, Number, and Gender. Words used in the past or present tense include the future as well as the past or present unless the context clearly indicates the contrary. The singular shall include the plural and the plural shall include the singular as the context and application of this Title may reasonably suggest. Words of one gender shall apply to any person, natural or fictitious, regardless of gender, as the context and application of this Title may reasonably suggest.

(g) Fractional Numbers. In determining compliance with the numerical requirements of this Title, any computation or measurement resulting in a fractional number, except for acres, shall be rounded to the nearest whole number.

(h) Public Officials, Bodies and Agencies. All public officials, bodies, and agencies to which reference is made are those of the City of Draper, Utah unless otherwise indicated.

(i) Delegation of Authority. Whenever a provision appears requiring the City Manager, head of a department, or some other officer or employee to do some act or perform some duty, it shall be construed to authorize the City Manager, head of the department, or other officer to designate, delegate, and authorize professional-level subordinates to perform the required act or duty unless the terms of the provision or section specify otherwise.

## **Title 9 Land Use and Development Code for Draper City**

### **Chapter 9-4 DECISION MAKING BODIES AND OFFICIALS**

#### **Sections:**

<a href="#">9-4-010</a>	<a href="#">Purpose</a>
<a href="#">9-2-020</a>	<a href="#">Scope</a>
<a href="#">9-4-030</a>	<a href="#">City Council</a>
<a href="#">9-4-040</a>	<a href="#">Planning Commission REPEALED (See 3-1-280)</a>
<a href="#">9-4-050</a>	<a href="#">Appeals and Variance Hearing Officer</a>
<a href="#">9-4-060</a>	<a href="#">Staff Referral by Planning Commission</a>
<a href="#">9-4-070</a>	<a href="#">Zoning Administrator</a>
<a href="#">9-4-080</a>	<a href="#">Development Review Committee</a>

**Section 9-4-010 Purpose.** The purpose of this Chapter is to set forth the authority of the decision making bodies and officials responsible for administering the provisions of this Title.

**Section 9-4-020 Scope.** The authority of the decision making bodies and officials set forth in this Chapter shall apply to the entirety of this Title subject to its various provisions.

#### **Section 9-4-030 City Council.**

(a) Powers Not Enumerated in this Title. See City Council powers and duties set forth in Chapter 2-1 of the Draper Municipal Code.

(b) Powers and Duties Related to this Title. In administering this Title, the City Council shall have the powers and duties set forth below. Each of such powers and duties shall be exercised pursuant

to the procedural and other provisions of this Title.

- (1) Adopt, modify, or reject a proposed General Plan or any amendment thereto for all or part of the City and its surroundings.
- (2) Adopt, modify, or reject proposed amendments to the text of this Title and to the zoning map.
- (3) Approve, approve with conditions, or deny subdivision applications.
- (4) Hear and decide appeals from decisions of the Planning Commission regarding conditional use permits and site plans.
- (5) Hear and decide appeals from decisions of the Historic Preservation Commission.
- (6) Establish a fee schedule for applications required by provisions of this Title.

**Section 9-4-040 Planning Commission. REPEALED**

**Section 9-4-050 Appeals and Variance Hearing Officer.**

- (a) Appointment. The Appeals and Variance Hearing Officer shall be appointed as follows:
  - (1) The Appeals and Variance Hearing Officer shall be appointed by the Mayor with the advice and consent of the City Council.
  - (2) The Appeals and Variance Hearing Officer shall be appointed for a term of one year and thereafter may be appointed for succeeding one year terms.
  - (3) The Appeals and Variance Hearing Officer shall, as a minimum, have such training and experience as will qualify them to conduct administrative or quasi-judicial hearings regarding land use, land development, and regulatory codes dealing with issues related to land use.
  - (4) The Mayor may remove the Appeals and Variance Hearing Officer for cause upon receipt of written charges filed against the Appeals and Variance Hearing Officer with the City Manager and upon the advice and consent of the City Council. The Mayor shall provide the Appeals and Variance Hearing Officer with a public hearing if one is requested.
  - (5) In the case of death, resignation, removal or disqualification, the position of Appeals and Variance Hearing Officer shall be promptly filled by a replacement appointed by the Mayor with the advice and consent of the City Council for the unexpired term of the previous Appeals and Variance Hearing Officer.

(6) The Appeals and Variance Hearing Officer shall be considered an independent contractor; and as such will enter into a year long contract for services at the beginning of each appointed term. Terms for compensation and reimbursement will be determined and agreed upon in the aforementioned contract. The terms and conditions of the contract shall ultimately be approved by the City Council prior to any individual entering into an agreement with the City to serve as the Appeals and Variance Hearing Officer.

(7) The Mayor may, from time to time, appoint an Appeals and Variance Hearing Officer pro tempore on a temporary basis when necessitated by the absence, unavailability, incapacity or disqualification of the regularly appointed Appeals and Variance Hearing Officer upon the advice and consent of the City Council. Each Appeals and Variance Hearing Officer pro tempore shall, as a minimum, have qualifications which are similar to the regularly appointed Appeals and Variance Hearing Officer.

(b) Organization and Procedure. The Appeals and Variance Hearing Officer shall organize and exercise its powers and duties as follows:

(1) The Appeals and Variance Hearing Officer may adopt reasonable policies and procedures in accordance with City Ordinances to govern the conduct of its meetings and hearings and for any other purposes considered necessary for the functioning of the position of Appeals and Variance Hearing Officer. Such policies and procedures shall be approved by the City Council before taking effect.

(2) The Appeals and Variance Hearing Officer shall hold meetings as needed to consider matters within its purview under this Title. The Appeals and Variance Hearing Officer meeting shall be held on the first Wednesday after the first Tuesday of each month and such other times deemed necessary by the Appeals and Variance Hearing Officer. All meetings and hearings shall be properly noticed and held in accordance with the open meetings law set forth in Utah Code Annotated § 52-4-1, et seq., as amended. Written minutes of all meetings and hearings of the Appeals and Variance Hearing Officer shall be prepared and filed in the office of the City Recorder for review and access by the public in accordance with the Draper City Government Records Access and Management Ordinance.

(3) Decisions made by the Appeals and Variance Hearing Officer shall become effective at the meeting or hearing in which the decision is made, unless a different time is designated in the Appeals and Variance Hearing Officer's accepted rules or at the time the decision is made.

(c) Powers and Duties. The powers and duties of the Appeals and Variance Hearing Officer shall be limited to the matters set forth below. Each of such powers and duties shall be exercised pursuant to the procedural and other provisions of this Title.



(1) Subject to the provisions of Section 3-1-280(l)(7), hear and decide appeals from zoning decisions of the Planning Commission or Zoning Administrator applying the provisions of this Title.

(2) Hear and decide special exceptions.

(3) Hear and decide variances from the terms of this Title.

(4) Hear and decide appeals from decisions made by the Zoning Administrator regarding Chapter 6 of this Title.

(5) With the consent of the City Council, designate routine and uncontested matters that may be decided by the Zoning Administrator. The Appeals and Variance Hearing Officer shall establish guidelines by which routine and uncontested matters shall be decided.

(d) Appeals. Appeals to the Appeals and Variance Hearing Officer shall be filed in writing with the Zoning Administrator within 14 days from the date of the decision or action appealed as provided in Section 9-5-180(d)(1). The officer or department from whom the appeal is taken shall forthwith transmit to the Appeals and Variance Hearing Officer all papers constituting the record upon which the action appealed from was taken.

(e) Notice of Hearing. The Appeals and Variance Hearing Officer shall fix a reasonable time for the hearing of each appeal, give public notice thereof as well as due notice to the parties in interest, at least ten days prior to the hearing and shall set certain other criteria as to the form of notice whether by publication, certified mail or other criteria, reasonably designed to give notice to those parties subject to be affected thereby.

(f) Decisions of the Appeals and Variance Hearing Officer. At the hearing of any matter, the parties affected may appear in person with or without an attorney. The Appeals and Variance Hearing Officer shall decide all appeals and other issues brought before it within a reasonable time.

(g) Stay of Proceedings. An appeal to the Appeals and Variance Hearing Officer shall not stay proceedings taken in furtherance of the action appealed from unless such proceedings are specifically stayed by order of the Zoning Administrator. An appellant may request a stay by submitting to the Zoning Administrator, in writing, an application for a stay setting forth the reasons why a stay is necessary to protect against imminent harm. In determining whether or not to grant a stay, the Zoning Administrator shall assure that all potentially affected parties are given the opportunity to comment on the request. A ruling on the request for a stay shall be given within five days from the date the request is received by the Zoning Administrator. The Zoning Administrator, in granting a stay, may impose additional conditions to mitigate any potential harm that may be caused by the stay, including requiring the appellant to post a bond. Within ten days of the Zoning Administrator's decision regarding the grant or denial of a stay, any aggrieved party may appeal the decision to the Appeals and Variance Hearing Officer, whose decision will



be final.

(h) Appeals from the Appeals and Variance Hearing Officer. Any person aggrieved by a final decision of the Appeals and Variance Hearing Officer may have and maintain a plenary action for relief there from in any court of competent jurisdiction, provided that the petition for such relief is presented to the court within 30 days from the date of the decision of the Appeals and Variance Hearing Officer.

#### **Section 9-4-060 Staff Referral by Planning Commission.**

(a) Staff Referral. The Planning Commission may direct that any matter over which it has jurisdiction be referred to the staff of the Community Development Department for review and preparation of recommendations. Such action shall be taken either by motion of the Planning Commission or pursuant to duly adopted bylaws of the Planning Commission. The authority for such referrals may be revoked at any time by motion of the Planning Commission or amendment of its bylaws, as the case may be.

(b) Appointment of Hearing Officer. In the event a matter is referred to Community Development Department staff which requires a public hearing, the City Manager shall appoint a hearing officer to conduct the hearing in accordance with applicable requirements of this Title.

(c) Review and Recommendation. If a matter is referred to the Community Development Department staff as permitted by this section, the staff shall conform to any instructions or limitations contained in the referral, and subject thereto shall review the referred matter, conduct any necessary hearings, and prepare written recommendations for the Planning Commission.

(d) Decision. Unless the Planning Commission shall otherwise direct, any person who has applied for authorization to develop property under the terms of this Title may in writing consent to the staff recommendation and waive further action by the Planning Commission. If the applicant waives further action by the Planning Commission, the staff recommendation shall be considered approved by the Planning Commission. Thereafter necessary permits may be issued subject to the terms of this Title and any applicable conditions of approval.

(e) Limitation. This section shall not apply to any action with respect to which the Planning Commission is required by law to take direct action.

#### **Section 9-4-070 Zoning Administrator.**

(a) Appointment. The City Manager shall designate a staff person who shall be primarily responsible for administering and enforcing this Title. Such person shall be known as the Zoning Administrator.

(b) Interpretation. The Zoning Administrator shall interpret the ordinance to members of the

public, City departments, and to other branches of government, subject to general and specific policies established by the Planning Commission and City Council. Upon request, the Zoning Administrator shall make a written interpretation of the text of this Title pursuant to Section 9-5-170 of this Title.

(c) Administrative Duties. The Zoning Administrator shall accomplish or cause to be accomplished all administrative actions required by this Title, including the giving of notice, holding of hearings, preparation of staff reports, and receiving and processing of appeals.

(d) Negotiation and Advice. The Zoning Administrator may negotiate with and advise all persons making application for any project which requires approval by the Planning Commission or City Council.

## **ARTICLE 2 ADMINISTRATION AND ENFORCEMENT**

### **Chapter 9-5 ADMINISTRATIVE AND DEVELOPMENT REVIEW PROCEDURES**

#### **Sections:**

<u><a href="#">9-5-010</a></u>	<u><a href="#">Purpose</a></u>
<u><a href="#">9-5-020</a></u>	<u><a href="#">Scope</a></u>
<u><a href="#">9-5-030</a></u>	<u><a href="#">General Application Requirements</a></u>
<u><a href="#">9-5-040</a></u>	<u><a href="#">Public Hearings and Meetings</a></u>
<u><a href="#">9-5-045</a></u>	<u><a href="#">Noticing</a></u>
<u><a href="#">9-5-050</a></u>	<u><a href="#">General Plan Amendments</a></u>
<u><a href="#">9-5-060</a></u>	<u><a href="#">Zoning Map and Text Amendments</a></u>
<u><a href="#">9-5-070</a></u>	<u><a href="#">Permitted Use Reviews</a></u>
<u><a href="#">9-5-080</a></u>	<u><a href="#">Conditional Use Permits</a></u>
<u><a href="#">9-5-090</a></u>	<u><a href="#">Site Plan Review</a></u>
<u><a href="#">9-5-100</a></u>	<u><a href="#">Special Exceptions</a></u>
<u><a href="#">9-5-110</a></u>	<u><a href="#">Variances</a></u>
<u><a href="#">9-5-120</a></u>	<u><a href="#">Building Permits</a></u>
<u><a href="#">9-5-130</a></u>	<u><a href="#">Nonconforming Uses</a></u>
<u><a href="#">9-5-140</a></u>	<u><a href="#">Sign Permits</a></u>
<u><a href="#">9-5-150</a></u>	<u><a href="#">Temporary Use Permits</a></u>
<u><a href="#">9-5-160</a></u>	<u><a href="#">Routine and Uncontested Matters</a></u>
<u><a href="#">9-5-170</a></u>	<u><a href="#">Administrative Interpretations</a></u>
<u><a href="#">9-5-180</a></u>	<u><a href="#">Appeal of Administrative Decisions</a></u>
<u><a href="#">9-5-190</a></u>	<u><a href="#">Procedural Irregularities</a></u>
<u><a href="#">9-5-200</a></u>	<u><a href="#">Development Agreements</a></u>

#### **Section 9-5-180 Appeal of Administrative Decisions.**

(a) Purpose. This section sets forth procedures for appealing an administrative decision applying provisions of this title.

(b) Authority. The Appeals and Variance Hearing Officer or the City Council, as designated in these ordinances shall hear and decide appeals from administrative decisions applying the provisions of this title as provided in this section.

(c) Initiation. Any person adversely affected by a decision administering or interpreting a provision of this title may appeal to the Appeals and Variance Hearing Officer or City Council, as applicable, as provided in Subsection 9-5-180(d)(1). A complete Notice of Appeal shall be filed within 14 days of the decision which is appealed.

(d) Procedure. An appeal of an administrative decision shall be considered and processed as provided in this subsection.

(1) A complete Notice of Appeal shall be submitted to the office of the Zoning Administrator on a form established by the Administrator along with the fee established by the City in its Consolidated Fee Schedule. The Notice of Appeal shall include at least the following information:

- (i) the name, address and telephone number of the applicant and the applicant's agent, if any.
- (ii) the decision appealed;
- (iii) grounds for the appeal; and
- (iv) a description of the action claimed by the applicant to be incorrect.

(2) After the Notice of Appeal is determined to be complete and timely filed, the Zoning Administrator shall schedule a hearing before the appropriate body. Notice of the hearing, whether before the Appeals and Variance Hearing Officer or the City Council, shall be given as provided in Sections 9-4-050(e) and 9-5-040(c) of this title. Prior to the hearing the Zoning Administrator shall transmit to the appellate body all papers constituting the record of the action which is appealed.

(3) An appeal to the Appeals and Variance Hearing Officer or City Council shall not stay proceedings taken in furtherance of the action appealed from unless such proceedings are specifically stayed by order of the Zoning Administrator. An appellant may request a stay by submitting to the Zoning Administrator, in writing, a request for a stay setting forth the reasons why a stay is necessary to protect against imminent harm. In determining whether or not to grant a stay, the Zoning Administrator shall assure that all potentially affected parties are given the opportunity to comment on the request. A ruling on the request for a stay shall be given within five (5) days from the date the request is received by the Zoning Administrator. The Zoning Administrator, in granting a stay, may impose additional conditions to mitigate any potential harm that may be caused by the stay, including requiring the

appellant to post a bond. Within ten (10) days of the Zoning Administrator's decision regarding the grant or denial of a stay, any aggrieved party may appeal the decision to the appellate body with jurisdiction over the appeal, whose decision will be final.

(4) The appellate body shall conduct a hearing based upon the record only, taking no new testimony or new information but relying solely upon the information and final decision of the officer or body from whom the appeal was taken. The appellate body shall determine the correctness of the lower decision and thereafter affirm or reverse, wholly or in part, the lower decision, modify that decision, or impose any conditions needed to conform the matter appealed to applicable approval standards. The appellate body shall have all the powers of the officer or body from whom the appeal was taken and may issue or direct the issuance of a permit.

(5) After the appellate body makes a decision, the Zoning Administrator shall give the applicant written notice of the decision. The decision takes effect on the date when the appeal authority issues a written decision.

(6) A record of all appeals shall be maintained in the office of the Zoning Administrator.

#### **Section 9-5-190 Procedural Irregularities.**

(a) Notwithstanding any provision of this Title which sets forth a procedure for any matter herein, no action, inaction or recommendation regarding the matter which is the subject of the procedure shall be void or invalid or set aside by a court due to any error (including but not limited to any irregularity, informality, neglect or omission) which pertains to a petition, application, notice, finding, record, hearing, report, recommendation or any other procedural matter whatsoever unless:

(1) the procedure is required by state or federal law; and

(2) in an examination of the entire circumstances, including the evidence of record, the court is of the opinion that the procedural error complained of was prejudicial to a substantial right of the complainant as shown by the following:

(i) had the error not occurred the decision made pursuant to the procedure would have been different, and

(ii) because of the error the complainant suffered an injury for which relief must be given.

(b) The court shall presume that action taken pursuant to a procedure was done in good faith and shall not presume that an error is prejudicial or that an injury occurred. The complainant shall have the burden of the proof by a preponderance of the evidence to show that an error is prejudicial or that an injury occurred.

(c) All procedures within this Title shall be subject to this section.



## Section 9-5-200 Development Agreements.

(a) Purpose. A development agreement may be negotiated and executed between a developer and the City to set forth the specific requirements, elements and any other aspects of a development.

(b) Initiation. A complete application shall be submitted to the office of the Zoning Administrator in a form established by the Administrator along with any fees established by the City's schedule of fees. The application shall include a copy of the proposed development agreement and any related exhibits.

(c) Procedure. All development agreements, upon proper execution, shall be recorded with the respective County Recorder's Office, shall run with the land, and shall be binding on all successors in the ownership of the affected property. A development agreement shall contain, at a minimum, the following:

1. A legal description of the land subject to the development agreement.
2. The restrictions or conditions to be attached to the property including development standards and the provision of public facilities.
3. The configuration of the project as shown on a project master plan.
4. A statement of the benefits and value the development agreement will have for the City as a whole, including but not limited to assurances of design standards, dedication and improvement of open space, parks, trails, amenities, or infrastructure such as public rights-of-way or utilities.
5. The time frames for performance by the parties.
6. A description of the various city approvals required before the commencement of construction and other procedures that will be required after approval of the development agreement.
7. Provisions for enforcement of the terms and conditions of the development agreement;
8. Provisions for making amendments to the development agreement.
9. The time limitation of the agreement.
10. Such other terms as may be proposed and agreed to between the city and developer or subdivider.



## **Title 9 Chapter 5 Code Amendments**

9-5 Amended	Ordinance 589	06/15/2004
9-5 Amended	Ordinance 624	02/08/2005
9-5 Amended	Ordinance 675	03/28/2006
9-5 Amended	Ordinance 740	06/26/2007
9-5 Amended	Ordinance 787	10/23/2007
9-5-070, 100, 110, 120, 140-180 Amended	Ordinance 815	04/01/2008
9-5-090(h) Amended	Ordinance 875	01/06/2009
9-5-080 Amended	Ordinance 949	10/05/2010
9-5-045 Amended	Ordinance 1075	11/19/2013
9-5-060 Amended	Ordinance 1132	02/17/2015
9-5-090 Amended	Ordinance 1132	02/17/2015
9-5-110 Amended	Ordinance 1132	02/17/2015
9-5-200 Enacted	Ordinance 1132	02/17/2015

**Affidavit of Posting**

**SALT LAKE/UTAH COUNTY, STATE OF UTAH**

I, the City Recorder of Draper City, by my signature below, certify that copies of **Ordinance No. 1199** for the **City of Draper**, which **Passed and Adopted by the City Council of Draper City, State of Utah on the 17<sup>th</sup> day of May, 2016**, was posted at the following places: Draper City Bulletin Board, Salt Lake County Library, Draper Crescent Senior Citizens Center, within the municipality.

**Posted:** May 23, 2016 through June 13, 2016

City Seal



A handwritten signature in blue ink, appearing to read "Rachelle Conner", is written over a light blue rectangular background.

Rachelle Conner, MMC  
City Recorder  
Draper City, State of Utah