# SUBDIVISION ORDINANCE AND CODIFICATION

*An Ordinance Revising the Subdivision Ordinance of Cleveland, Utah*

WHEREAS the Town Council of Cleveland, Utah, pursuant to the provisions of §10-3-707 of Utah State Code, as amended, has the authority to revise ordinances of the municipality of a general and permanent character;

WHEREAS the Town Council has reviewed the proposed revisions and has made such changes, alterations, modifications, additions, and substitutions as it deems best; and

WHEREAS the Town Planning Commission has held a public hearing on the proposed revisions and provided a recommendation on the same to the Town Council.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF CLEVELAND, UTAH:

SECTION I: The documents titled "Cleveland Subdivision Chapter 2-10 – Draft 3.2 (Nov. 5).docx" and "Cleveland Subdivision Chapters 2-3 and 2-4 – Draft 3.2 (Nov. 5).docx" attached as Exhibit 'A' and 'B', are hereby adopted as a replacement for the currently existing Titles 2-10, 2-3 and 2-4 of the Town's ordinances (governing the subdivision of land within the Town), subject to any immaterial changes that may occur post-adoption during the codification process. These documents shall be accepted in all courts without question as the official subdivision ordinances of the Town as enacted by the Town Council.

SECTION II: If any provisions of the Town's code previously adopted are inconsistent herewith, they are hereby repealed.

SECTION III: This ordinance, being necessary for the peace, health, and safety of the Town, shall become effective immediately upon posting.

PASSED AND ADOPTED by the Town Council of Cleveland, Utah, this 14th day of November, 2024.

Shawna Horrocks
Mayor of Cleveland, Utah

ATTEST:

Nancy Livingston
Cleveland Town Clerk

| COUNCIL Vote As Recorded: | AYE | NAY | ABSENT |
|---|---|---|---|
| Name: Kristin Wise | X | | |
| Name: Whitney Guymon | X | | |
| Name: Shawna Horrocks | X | | |
| Name: Dané Jensen | X | | |
| Name: Chance Thompson | X | | |

RECORDED this 14th day of November, 2024.

PUBLISHED / POSTED this ____ day of November, 2024.

**CERTIFICATE OF PASSAGE AND PUBLICATION / POSTING**

In accordance with §10-3-713 of Utah State Code, as amended, I, Nancy Livingston of Cleveland, Utah, hereby certify that the foregoing ordinance was duly passed and published or posted on the above referenced dates at:

1) Cleveland Town Hall
2) Utah Public Notice Website
3) US Post Office - Cleveland Branch
4) Cleveland Town Library

Nancy Livingston
Town Clerk

**Exhibit 'A': Cleveland Subdivision Chapter 2-10 – Draft 3.2 (Nov. 5).docx**

*[Attached as Follows.]*

**Exhibit 'B': Cleveland Subdivision Chapters 2-3 and 2-4 – Draft 3.2 (Nov. 5).docx**

*[Attached as Follows.]*

*[Attached as Follows.]*

# Chapter 2: Zoning Ordinance
## Subsection 2-10: Subdivisions


**2-10.1 PURPOSE**
**2-10.2 SCOPE OF APPLICABILITY**
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**2-10.15 POST-APPROVAL ACTIONS**
**2-10.16 AMENDING OR VACATING A SUBDIVISION PLAT**


### 2-10.1 PURPOSE

The purpose of this Subsection is to comply with Utah Code §10-9a-604–609 and increase administrative efficiency in reviewing subdivision applications.

### 2-10.2 SCOPE OF APPLICABILITY

This Subsection applies to all applications or petitions to subdivide land in the Town. The requirements of this Subsection do not apply retroactively to subdivision applications or petitions that were approved by the Town prior to the enactment of this ordinance.

### 2-10.3 APPROVED AND RECORDED DOCUMENTS REQUIRED

1) No land shall be subdivided which is located wholly or in part in the Town, except in compliance with this Subsection and Utah Code as adopted and amended.

2) A subdivision of land is not valid unless its governing document is approved by the Land Use Authority and properly recorded in the County Recorder's Office.

## 2-10.4 PENALTY FOR NONCOMPLIANCE

1) It is unlawful to transfer ownership of any parcel of land pursuant to an invalid subdivision.

2) Violations of this Chapter shall be punished according to Cleveland Town Code 2-3.12.

   a. The penalty for violations of this Chapter is a fine of $50 per day.

   b. Additionally, the Town may void transfers of ownership that are based on or create a subdivision that was not approved under this Chapter or that is noncompliant with the ordinances outlined in this Chapter and other applicable sections of Cleveland Town Code.

3) The statute of limitations for the Town's ability to void a transfer done pursuant to an invalid subdivision and/or impose a fine shall be five years after the plat is recorded in the County Recorder's Office. After five years, the lot(s) in question shall be treated as a legal nonconforming use, except to the extent that conditions on the lot(s) post a substantial danger to the health or safety of inhabitants or the neighboring community. When a transfer becomes void, the applicant must commence the subdivision application process anew.

## 2-10.5 INTERPRETATION AND CONFLICT OF LAWS

Where any provision in this Subdivision Chapter conflicts with state law, state law shall prevail. Where any provision in this Subdivision Chapter conflicts with other ordinances enacted by the Town, the provisions in this Subdivision Chapter shall prevail unless the Town intended such conflicting ordinances not in this Chapter to amend this Chapter

## 2-10.6 DEFINITIONS

# Chapter 2: Zoning Ordinance
## Subsection 2-10: Subdivisions

The following words and phrases, as used in this Chapter, shall have the following meanings. Words and phrases not defined here have the meaning expressed elsewhere in Town ordinances or, if not defined in Town ordinances, the meaning defined in state law:

1) IMPROVEMENT PLAN: a plan to complete permanent infrastructure on the subdivision that is essential for the public health and safety or that is required for human occupation and that an applicant must install in accordance with public installation and inspection specifications for public improvements and as a condition of recording a subdivision plat.

2) LAND USE AUTHORITY: an individual, board, or commission appointed or employed by a Town to make land use decisions.

3) LAND USE APPLICATION: an application required by the Town and submitted by a land use applicant to obtain a land use approval; this does not mean an application to enact, amend, or repeal a land use regulation.

4) PLAT: An instrument subdividing property into lots as depicted on a map or other graphic representation of land that a licensed professional land surveyor makes and prepares in accordance with §10-9a-603 or §57-8-13 of Utah State Code (as amended).

5) SUBDIVISION: Any land that is divided, subdivided, or proposed to be divided into two or more lots or other division of land for the purpose, whether immediate or future, for offer, sale, lease, or development either on the installment plan or upon any and all other plans, terms, and conditions.

    a. Subdivision includes:

        i. The division or development of land, whether by deed, metes and bounds description, devise and testacy, map, plat, or other recorded instrument, regardless of whether the division includes all or a portion of a parcel or lot; and

ii. Except as provided below, divisions of land for residential and nonresidential uses, including land used or to be used for commercial, agricultural, and industrial purposes.

b. Subdivision does not include:

i. A bona fide division or partition of agricultural land for the purpose of joining one of the resulting separate parcels to a contiguous parcel of unsubdivided agricultural land, if neither the resulting combined parcel nor the parcel remaining from the division or partition violates an applicable land use ordinance;

ii. A recorded document, executed by the owner of record revising the legal descriptions of multiple parcels into one legal description encompassing all such parcels or joining a lot to parcel;

iii. A road, street, or highway dedication plat; or

iv. A deed or easement for a road, street, or highway purpose.

6) WATER CONVEYANCE FACILITY: A ditch, canal, flume, pipeline, or other watercourse used to convey water used for irrigation or storm water drainage and any related easement for the ditch, canal, flume, pipeline, or other watercourse. "Water conveyance facility" does not mean a ditch, canal, flume, pipeline, or other watercourse used to convey water used for culinary or industrial water, or any federal water project facility.

## 2-10.7 SUBDIVISION LAND USE AUTHORITY

1) The Land Use Authority under this Chapter, except where otherwise noted, is the Planning Commission.

2) The Planning Commission is responsible for the following, but may delegate any task to Town staff:

a. Rendering a land use decision on all subdivision applications and petitions.

b. Reviewing all subdivision applications in an impartial manner and according to the standards and deadlines described in this Chapter.

c. Providing feedback to applicants in the manner required by this Chapter.

d. Scheduling and holding a pre-application meeting with potential applicants as requested.

e. Keeping subdivision application forms and related informational material up to date and publicly accessible and distributing such forms and materials to potential applicants. This task is delegated to Town staff by default.

f. Providing notice to entities and parties as required in this Chapter. This task is delegated to Town staff by default.

g. Signing subdivision application and petition approvals.

h. Ensuring that documents are properly recorded with the County. This task is delegated to Town staff by default.

3) As subdivision application decisions are administrative, not legislative, the Planning Commission is authorized to review and approve or deny subdivision applications without Town Council approval.

4) Except when operating as the Appeal Authority, the Town Council shall not require the Planning Commission to approve or deny a subdivision application.

## 2-10.8 SUBDIVISION APPEAL AUTHORITY

The Appeal Authority for Town decisions relating to this Subsection, except where otherwise noted, is the Town Council.

1) The Appeal Authority shall hear appeals on final decisions made by the Land Use Authority and shall hear complaints about the conduct of the Land Use Authority in administering the provisions of this Chapter.

2) A party appealing or complaining of a Land Use Authority decision under this Chapter must exhaust its remedies under this Subsection (by appealing or complaining to the Appeal Authority) before bringing an action against the Town in a court of law.

3) A party who has submitted a subdivision application or petition may appeal or complain to the Appeal Authority under this Chapter.

4) A party desiring to appeal or complain of a Land Use Authority decision shall submit to the Appeal Authority the following in writing:

    a. A brief explanation of the relief the party is seeking, the reason the party submitted its application or petition, the Land Use Authority's decision and treatment of the application or petition, and why the applicant believes the Land Use Authority misapplied the provisions of this Chapter or abused the discretion given it by this Chapter.

    b. The most recent version of the application or petition the party submitted.

    c. Any supplemental documentation or information that the Appeal Authority requests.

    d. All appeals and complaints must be emailed or mailed to the Town Clerk using the Clerk's official Town address and/or email account listed on the Town website.

5) After receiving a complete appeal or complaint in accordance with this Subsection, the Appeal Authority shall deliver a decision to the applicant, in writing, no later than 30 days after the Appeal Authority receives the appeal or complaint.

## 2-10.9 APPLICATION REQUIREMENTS

1) To be considered complete, a subdivision application must include at least the following elements:

    a. An approved land use application that describes how the property will be used after it is subdivided.

        i. If the intended use is permitted by right under Town ordinances, the land use application must include citations to the specific ordinance(s) that the applicant believes authorizes the intended use.

        ii. If the intended use requires a conditional use permit or is otherwise conditioned on Town approval, the land use application must include an *approved*, Town-issued permit authorizing the intended use. Should an applicant seek a use permit concurrently with a related subdivision application, the subdivision application shall be considered incomplete until the use permit is issued.

        iii. If the intended use is prohibited under Town ordinances and requires a variance or rezone, the land use application must include an *approved*, Town-issued variance or rezone authorizing the intended use. Should an applicant seek a variance or rezone concurrently with a related subdivision application, the subdivision application shall be considered incomplete until the variance is issued or the rezone occurs.

    b. A plat. The plat must be drawn to scale, in detail, and in accordance with generally accepted surveying standards and the acceptable filing standards of the County Recorder's office. The plat must include:

        i. The proposed name and general location of the subdivision, in bold letters at the top of the plat. The proposed subdivision

name must be distinct from any subdivision name on a plat recorded in the County Recorder's office.

ii. The boundaries, course, numbering, and dimensions of all proposed parcels. All lots should be consecutively numbered.

iii. The lot or unit reference; block or building reference; street or site address; street name or coordinate address; acreage or square footage for all parcels, units, or lots; and length and width of the blocks and lots intended for sale.

iv. The names and addresses of all adjoining property owners of record, or the names of adjoining developments and the names of adjoining streets.

v. The address and phone number of the land surveyor and/or engineer who prepared the plat.

vi. Sufficient data acceptable to the Town Engineer (including any engineer contracted by the Town) to readily determine the location, bearing and length of all lines on the plat, and to reproduce such lines upon the ground, and the location of all proposed monuments, including contours at intervals of two feet, five feet, or ten feet.

vii. Whether any parcel is intended to be used as a street or for any other public use.

viii. The names, numbers, widths, lengths, bearings, and curve data on centerlines for all proposed streets, alleys, and easements (if applicable). All proposed streets shall be numbered and named in accordance with the Town's adopted addressing system.

ix. The location of existing streets, easements, water bodies, streams, and other pertinent features such as wetlands, buildings, parks, cemeteries, drainage ditches, irrigation ditches, fences, and bridges.

x. The location and width of existing and proposed streets, curbs, gutters, sidewalks, easements, alleys, other public ways and easements and proposed street rights-of-way and building setback lines.

xi. Every existing right-of-way and recorded easement located within the plat for underground, water, and utility facilities.

xii. Any known and unrecorded water conveyance facility located, entirely or partially, within the plat.

xiii. Location and size of all proposed water, secondary water, sanitary sewer, storm sewer, irrigation or drainage ditch piping or other subsurface improvements, including detailed provisions for collecting and discharging surface water drainage.

xiv. Whether any parcel is reserved or proposed for dedication for a public purpose.

xv. The location and dimensions of all property proposed to be set aside for park or playground use, or other public or private reservation, with designation of the purpose thereof and conditions, if any, of the dedication or reservation.

xvi. If any portion of the proposed subdivision is within 300 feet of an Agriculture Protection Area, the notice language found in Utah Code §17-41-403(4).

xvii. If any portion of the proposed subdivision is within 1,000 feet of an Industrial Protection Area, the notice language found in Utah Code §17-41-403(4).

xviii. If any portion of the proposed subdivision is within 1,000 feet of a Critical Infrastructure Materials Protection Area, the notice language found in Utah Code §17-41-403(4).

xix. If any portion of the proposed subdivision is within 1,000 feet of a Mining Protection Area, the notice language found in Utah Code §17-41-403(4).

xx. If any portion of the proposed subdivision is within 1,000 feet of a Vested Critical Infrastructure Materials Operation (extracting, excavating, processing, or reprocessing sand, gravel, or rock aggregate where that use is not permitted by City ordinances), the notice language found in Utah Code §10-9a-904.

xxi. If the subdivision includes a condominium, the requirements found in Utah Code §57-8-13, as amended.

c. Reports and studies, including:

   i. A traffic study, if one is required by an applicable UDOT Access Management Plan (such as for a subdivision touching a road built or maintained by UDOT) or requested by the Planning Commission; and

   ii. Any other study or report reasonably necessary to ensure compliance with Town design standards and improvement requirements.

d. An improvement plan, created in accordance with applicable portions of Chapters 2-10 and 2-11, for all public improvements proposed by the applicant or required by Town ordinances.

   i. In addition to the requirements in Chapters 2-10 and 2-11, the improvement plan must contain an estimate of the cost of completing the required improvements as outlined in 2-11.22.

e. Certifications, including:

   i. An affidavit from the applicant certifying that the submitted information is true and accurate and that the applicant

understands that the applicant (and not the Town) bears all costs of guaranteeing and completing the required public improvements.

ii. The signature of each owner of record of land described on the plat, signifying their dedication and approval of the plat.

iii. Certification that the surveyor who prepared the plat:

(a) Holds a license in accordance with Utah Code §58-22; and

(b) Either

1. Has completed a survey of the property described on the plat in accordance with state requirements and has verified all measurements; or

2. Has referenced a record of survey map of the existing property boundaries shown on the plat and verified the locations of the boundaries; and

(c) Has placed monuments as represented on the plat.

iv. Proof of approval by the culinary water authority, the sanitary sewer authority, Southeast Utah Health Department, Castle Valley Special Service District, the local fire department, and the local public safety answering point.

f. Binding dedication documents, including:

i. As applicable, formal, irrevocable offers for dedication to the public of streets, Town uses, utilities, parks, easements, or other spaces.

ii. If the plat is to be part of a community association, signed and binding documents conveying to the association all common areas Utah State Code §57-8a-102.

g. Copies, including:

i. A PDF document of the complete application (including the plat and all other plans and supporting documents required by this Subsection); and

ii. Three 8.5" x 11" printed copies of the complete application, delivered to the Town office, for review.

h. Payment of any application fees required by the Town (e.g., on the Town's Fee Schedule), plus the cost of any engineering, legal, or consulting review reasonably incurred by the Town in reviewing the application.

2) The Town shall produce, maintain, and make available to the public a list of the specific items that comprise a complete land use application, plat, and improvement plan and a breakdown of any fees due upon submission or approval of the application.

3) The Planning Commission may require, and the applicant shall provide, additional information beyond the requirements of this Subsection or those published by the Town relating to an applicant's plans to ensure compliance with Town ordinances and approved standards and specifications for construction of public improvements.

4) Notwithstanding 2-10.9.1, the Planning Commission may, in its sole discretion, waive any of the specific requirements found in this Subsection on a case-by-case basis.

5) If an application is for a mobile home or travel trailer park as defined by Cleveland Town Code, the application shall be governed by the requirements outlined in Section 2-12.

## 2-10.10 EXCEPTIONS TO APPLICATION REQUIREMENTS

1) Agricultural Land:

a. Applications to subdivide agricultural land are exempt from the preliminary and final plat requirements (but not the other application requirements) of Subsection 2-10.9 if the resulting parcels:

   i. Qualify as land in agricultural use under Utah Code §59-2-502;

   ii. Meet the minimum size requirement of applicable Town land use ordinances; and

   iii. Are not used and will not be used for any nonagricultural purpose.

b. For subdivision applications for which this exception applies, an applicant may submit to the Town—in place of a plat—a record of survey map that illustrates the boundaries of the parcels.

c. If the Town approves a subdivision application based on a record of survey map, the applicant shall record the map, signed by the Town, with the County Recorder's Office. This shall be done in the same manner as is done for a plat under Subsection 2-10.9.

d. If a parcel resulting from a subdivision under this exception ever ceases to be used for agriculture, the subdivision shall become invalid. The Town may, in its discretion, impose the penalty in Subsection 2-10.4 and/or require a subdivision amendment before issuing a building permit.

2) Development Agreements:

a. The Town may approve a subdivision through a development agreement entered into between a developer and the Town.

b. Subdivisions platted in a valid development agreement are exempt from the application requirements (Subsection 2-10.7) and review and approval requirements (Subsection 2-10.11) of this Chapter.

c. Clauses in a valid development agreement with the Town superseded all conflicting requirements in this Chapter, except where a clause in

the development agreement poses a substantial danger to the health and safety of Town residents.

3) Minor Subdivisions:

a. Applications to subdivide land are exempt from the plat requirement (but not the other application requirements) of Subsection 2-10.7 if the subdivision:

i. Results in no more than 10 parcels;

ii. Is not traversed by the mapped lines of a proposed street (as shown in the Cleveland General Plan), Town easement, or any other land required for public purposes; and

iii. Is composed of lots that are each fronted by an existing improved street.

b. For subdivision applications for which this exception applies, an applicant shall submit to the Town—in place of a plat—both:

i. A record of survey map that illustrates the boundaries of the parcels; and

ii. A legal metes-and-bounds description that describes the parcels illustrated by the survey map.

c. If the Town approves a subdivision application based on a record of survey map and metes-and-bounds description, the applicant shall record the map and description, signed by the Town, with the County Recorder's Office. This shall be done in the same manner as is done for a plat under Subsection 2-10.11, except that the Town shall also provide the notice required in Utah Code §10-9a-605(1).

## 2-10.11 PRE-APPLICATION MEETING

1) A party intending to submit a subdivision application under this Chapter may request a pre-application meeting with the Planning Commission for the purpose of reviewing any element of the party's proposed subdivision application. The proposed application need not be complete for purposes of this meeting and may—if the party desires—be limited to a concept plan.

    a. If a party requests a pre-application meeting, Town staff shall schedule the meeting within 15 business days after the request. The meeting shall be scheduled at the earliest convenient opportunity, and, at the option of the party requesting the meeting, shall occur at the next regularly scheduled Planning Commission meeting.

    b. The Planning Commission shall conduct the meeting, provide feedback on materials as requested by the party, and shall provide or have available on the Town website the following at the time of the meeting:

        i. Copies of applicable land use regulations,

        ii. A complete list of standards required for the project, and

        iii. Relevant application checklists.

## 2-10.12 NOTICE TO AFFECTED ENTITIES

1) Within 15 calendar days after receiving a complete subdivision application under this Chapter, the Town shall provide written notice of the proposed subdivision to the facility owner of any water conveyance facility located, entirely or partially, within 100 feet of the subdivision plat.

    a. To determine whether any water conveyance facility is located within 100 feet of a proposed subdivision, the Town shall review information:

        i. From the facility owner under Utah Code §10-9a-211, using mapping-grade global positioning satellite units or digitized

data from the most recent aerial photo available to the facility owner;

ii. From the state engineer's inventory of canals; or

iii. From a licensed surveyor who has consulted with a representative of an existing water conveyance facility that services an area near the land the application concerns.

2) To give the owners of water conveyance facilities time to provide feedback on subdivision applications, the Planning Commission shall not approve a subdivision application under this Chapter sooner than 20 calendar days after the applicant submits a complete application. This waiting period does not apply to revised applications the applicant may submit during the application review process.

   a. A water conveyance facility owner's failure to provide comments to the Town about a subdivision application does not affect or impair the Planning Commission's authority to approve the subdivision application.

**2-10.13 REVIEW**

1) The Planning Commission shall review all subdivision applications under this Chapter in accordance with the requirements of this Subsection before approving or denying a subdivision application.

2) The review process begins when an applicant submits a complete application.

   a. The Planning Commission and Town staff, as delegated, shall not review an incomplete subdivision application, except to determine whether the application is complete.

   b. If the Planning Commission or Town staff, as delegated, determines that an application is not complete, it shall notify the applicant of the

incompleteness, highlighting any insufficiencies and explaining that the application will not be reviewed until completed.

3) After the applicant submits a complete application, the Planning Commission shall review and provide feedback to the applicant in up to **four "review cycles."**

   a. A review cycle consists of the following phases:

      i. Phase #1: The applicant submits a complete application (or, if after the first cycle, submits a revised version of the complete application).

      ii. Phase #2: The Town reviews the application in detail and assesses whether the application conforms to local ordinances.

      iii. Phase #3: The Town responds to the applicant, citing any missing requirements or areas of noncompliance and providing a detailed list of necessary revisions to the applicant, within **30 business days** after the applicant submitted the complete application. For any required modification or addition to the application or request for more information, the Town shall be specific and include citations to ordinances, standards, or specifications that require the modification and shall provide the applicant with an index of all requested modifications or additions.

      iv. Phase #4: The applicant revises the application, addressing each comment or requirement the Town made. The applicant must submit both revised plans and a written explanation in response to the Town's review comments, identifying and explaining the applicant's revisions and reasons for declining to make revisions, if any. If the applicant fails to respond to a comment made by the Town in its review, the review cycle is not complete and will remain open until the applicant addresses all comments.

4) The Planning Commission shall not (nor shall any other representative of the Town) require more than four review cycles for a subdivision application under this Chapter. If no further revisions are needed, the Planning Commission may end the review period early and approve or deny the application.

    a. This provision notwithstanding, for any subdivision application that affects property within an identified geological hazard area, the Town is exempt from limits on the number of permitted review cycles and the Town's deadlines for reviewing and responding (Phases #2 and #3).

    b. If the applicant makes a material change to an application not requested by the Town at any point in the review process, the Planning Commission may restart the review process, but only with respect to the portion of the application that the material change substantively affects.

    c. If an applicant takes longer than 40 business days to submit a revised subdivision improvement plan responding to the Town's requests for modifications and additions (in Phases #1 and #4), the Town shall have an additional 20 business days to review and respond to the revised application (Phases #2 and #3 of the next review cycle or issuing an approval decision).

    d. If an applicant takes longer than 180 calendar days to submit a revised application and respond to the Town's requests for modifications and additions (Phases #1 and #4), the application shall, at the option of the Planning Commission, expire. If an application expires, the applicant must restart the subdivision application process.

5) After the fourth or final review cycle is complete, the Planning Commission shall approve or deny the application within 20 days.

    a. If the Planning Commission has not approved or denied the application within 20 days after the fourth or final review, the

applicant may request a final decision. After such a request, the Town shall, within 10 days:

i. For a dispute arising from the subdivision improvement plans, assemble an appeal panel in accordance with Utah Code §10-9a-508(5)(d) to review and approve or deny the final revised set of plans; or

ii. For a dispute arising from the subdivision ordinance review, advise the applicant, in writing, of the deficiency in the application and of the right to appeal the determination to the designated Appeal Authority.

6) After the Town provides comments in the fourth or final review cycle, the Town shall not require further modifications or corrections unless those modifications or corrections are needed to protect public health and safety or to enforce state or federal law or unless the review cycle reset due to the applicant making a material change that the Planning Commission did not request.

   a. With the exception of modifications or corrections that are needed to protect public health and safety, that are needed to enforce state or federal law, or that arise from the review cycle bring reset, the Town waives noncompliant subdivision-related requirements that the Town does not identify during the review process.

   b. The applicant shall make reasonable changes, unless prohibited otherwise by a contract or deed, to the subdivision application to accommodate the water conveyance facility to the extent required by Utah Code §73-1-15.5.

7) The Planning Commission may, at its discretion, conduct one public hearing during the review period (including all review cycles) for a subdivision application.

a. The purpose of this public hearing is to ask questions of the applicant and receive commentary on the technical aspects of the application from affected entities, interested parties, and the public.

b. If the Planning Commission elects to hold a public hearing, the hearing must occur before the end of Phase #3 of the last review cycle. Scheduling issues shall not extend the review and approval deadlines in this Chapter.

8) Other Subsections of this Chapter notwithstanding, the Planning Commission shall approve or deny applications under this Chapter after reviewing the complete applications as described in this Subsection. This singular application and review process includes the combined elements of traditional "preliminary" and "final" applications, as those terms are used in Utah Code §10-9a-604.2. For purposes of applying Utah Code §10-91-604.1(3)(a) and §10-91-604.1(9)(b), as amended, this Chapter describes a "preliminary" review and approval, with "final" approval happening automatically when the plat is recorded.

## 2-10.14 APPROVAL

1) The Planning Commission shall approve any complete subdivision application made under this Chapter that complies with applicable Town ordinances.

2) The Planning Commission Chair shall issue all approvals in writing and shall certify the approved plat, either by signing the plat directly or by attaching a signed certification to the plat.

3) **Subdivider Responsible for Cost of Improvements:** All costs pertaining to the guarantee and construction of public improvements required by Town ordinances or proposed by the applicant shall be borne by the applicant. Subdivision approval under this Chapter shall not be construed as an acceptance by the Town of responsibility to pay for any improvements.

## 2-10.15 POST-APPROVAL ACTIONS

1) The applicant shall record the approved plat with the County Recorder's Office within 365 calendar days after the Town approves the application, provided that the applicant has completed any improvements or posted any performance guarantee required by Town ordinances or described in the approved improvement plan. The applicant shall not record the approved plat until such improvements are completed or guaranteed in compliance with Town ordinances and the approved improvement plan.

    a. An approved plat not properly recorded within the timeline specified in this provision is void, unless the Planning Commission approves an extension.

2) Town staff shall submit, within 30 days after approving a final plat, to the Utah Geospatial Resource Center (so the subdivision can be included in the 911 database) either:

    a. an electronic copy of the approved final plat; or

    b. preliminary geospatial data that depict any new streets and site addresses proposed for construction within the bounds of the approved plat. (§10-9a-603(5)).

## 2-10.16 AMENDING OR VACATING A SUBDIVISION PLAT

1) The Town Council may vacate a subdivision or a portion of a subdivision by enacting an ordinance to that effect that describes the subdivision or the portion being vacated and recording that ordinance in the County Recorder's Office. The Town Council may also approve petitions to amend an existing subdivision (except where such amendment would result in a further subdivision). The vacation or amendment shall be done in compliance with this code and Utah State Code §10-9a-608 and §10-9a-609.

2) Requests, petitions, or applications to amend an existing subdivision in a way that results in additional parcels shall be treated as an application for a new subdivision.

**Exhibit 'B': Cleveland Subdivision Chapters 2-3 and 2-4 – Draft 3.2 (Nov. 5).docx**

*[Attached as Follows.]*

# Chapter 2: Zoning Ordinance
## Section 2-3 Administration & Enforcement


**2-3.1 AMENDMENTS TO THE ZONING CODE OR MAP**
**2-3.2 REVIEWING BODIES**
**2-3.3 FEE SCHEDULE FOR PERMITS**
**2-3.4 ALLOWED USE REVIEW**
**2-3.5 CONDITIONAL USE REVIEW**
**2-3.6 SIGN PERMIT REVIEW**
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### 2-3-1 AMENDMENTS TO THE ZONING CODE OR MAP

Amendments to this title shall be made in the following manner:

**A. APPLICATION.** An applicant must file a written request for amendment with the Town Clerk's Office. The Town Council, Planning Commission, or owner/applicant may initiate an amendment as provided below. An owner/applicant shall pay the filing fee prescribed by resolution, and shall file an application, which shall include, without limitation:

1. The legal description of all property included;
2. Common address if available; and
3. A written statement addressing the criteria required for approval pursuant to **2-3.1(E)** below.

**B. HEARINGS BEFORE PLANNING COMMISSION.** The Planning Commission, a Land Use Authority, shall hold a public hearing on all amendments to this title or to the Land Use Zoning

Map. The Town Clerk's Office shall cause a notice, including a description of the property for which the zoning amendment is requested, a brief explanation of the proposed zoning, and the date, place and time of the public hearing, to be prepared as provided in **2-3.8** below. The purpose of the notice is to reasonably inform the general public, surrounding property owners and governmental jurisdictions of the application. No minor omission or defect in the notice or mailing shall be deemed to impair the validity of the proceedings to consider the application.

**C. ACTION BY PLANNING COMMISSION.** Following the public hearing, the Planning Commission shall adopt a written recommendation to the Town Council, advising the Council to approve, disapprove, or modify the proposal. If the Planning Commission fails to take action within sixty (60) days of the close of the public hearing, the Town Council shall consider the matter forwarded from the Planning Commission with a negative recommendation.

**D. HEARING BEFORE COUNCIL.** The Town Council may hold a public hearing on all proposed amendments to this title or Land Use Zoning Map forwarded from the Planning Commission. Notice of the public hearing shall be provided in accordance with **2-3.1(B)** above.

**E. CRITERIA/REQUIRED FINDINGS:** The Town's land use zoning is the result of a detailed and comprehensive review and determination of the Town's present and future land use allocation needs. In order to establish and maintain sound, stable, and desirable development within the Town, re-zoning of land is to be discouraged and allowed only under the limited circumstances herein described. Therefore, the Planning Commission may recommend, and the Town Council may grant, a re-zoning application only if it determines, in written findings, that the re-zoning is consistent with the policies and goals of the Cleveland Town General Plan and that the applicant has demonstrated the following:

1. The proposed re-zoning is necessary either to comply with the Cleveland Town General Plan proposed Land Use Map, or to

provide land for a community need that was not anticipated at the time of adoption of the Cleveland Town General Plan; or

2. Existing zoning was either the result of a clerical error or a mistake of fact, or that it failed to take into account the constraints on development created by the natural characteristics of the land, including but not limited to, steep slopes, flood-plain, unstable soils, and inadequate drainage; or

3. Land or its surrounding environs has changed or is changing to such a degree that it is in the public interest to encourage redevelopment of the area or to recognize the changed character of the area.

**F. TEMPORARY OR EMERGENCY ZONING.** The Town Council may enact an ordinance, without a public hearing or Planning Commission recommendation, which establishes temporary zoning regulations for any part or all of the area with the Town if the:

1. Town Council makes a written finding of compelling countervailing public interest; or
2. The area is not zoned.

Temporary zoning regulations may prohibit or regulate the erection, construction, reconstruction, or alteration of any building or structure or any subdivision approval. The Town Council shall establish a period of limited effect for the ordinance, which period may not exceed six (6) months.

**2-3.2 REVIEWING BODIES.**
A complete list of all review bodies can be found in section **2-4.1 Powers and Duties Matrix** of this title.

**A.** No building permit shall be valid for any structure unless the permit for the proposed structure has been submitted to and have been approved by the proper Land Use Authority.

**B.** No new use shall be valid on any property unless the use is allowed in the zone, or unless a Conditional Use permit has been properly issued for the use.

**C.** No subdivision plat or other subdividing instrument shall be recorded unless all conditions of subdivision approval have been satisfied or otherwise secured under Section 2-10.

**D.** The Planning Commission shall review all completed applications, and shall make recommendations to the Town Council on all applications for which the Town Council is the Land Use Authority. On applications for which the Planning Commission is the Land Use Authority, the Planning Commission may consult with legal advisors and other contracted employees for recommendations. The Planning Commission may, in its discretion, process one (1) application at a time, per property, or may process coordinated applications simultaneously. **No review shall occur until all applicable fees are paid.**

**E.** The Building Official issues building permits. The Town Council issues business licenses.

**F.** The Town Council shall act as the Land Use Authority and hear all requests for variances. The Town Council acting as an Appeal Authority shall hear all appeals for: Administrative decisions for which they were not also the Land Use Authority, Conditional Use Permits, Subdivision Applications, Nonconforming Structures and Noncomplying Uses.

**G.** The Town Attorney acting as an Appeal Authority shall hear all appeals for: The Annexation Policy Plan, Annexation Applications, Vacation or Amendment of a Subdivision Plat, Amendment to a Platted Street, Business Licenses and any other appeal not heard by the Town Council.

## 2-3.3 FEE SCHEDULE

The most recently adopted fee schedule of Cleveland Town is **Resolution No.** _____and is part of this code by reference.

## 2-3.4 BUILDING PERMIT REVIEW

A. **PLAN REVIEW PROCESS.** The following process for obtaining a building permit applies to all applications for new development.

B. **INITIAL CONTACT.** An applicant for new development shall contact the Planning Commission to discuss the scope and purpose of the proposed development and the requirements of this code, including the following:

1. An allowed use within the zone;

2. Complies with all applicable development requirements of the zone, including building height, setback, front, side, and rear yards, and lot coverage;

3. Respects lot lines of a legally subdivided lot;

4. Complies with the parking requirements for the zone;

5. Conforms with applicable design guidelines, if any, for the zone;

6. Can adequately be serviced by roads, existing or proposed utility systems or lines; and

7. Pertains to land on which all tax assessments have been paid.

C. **PRELIMINARY REVIEW.** The applicant shall provide the Planning Commission with the following:

1. A statement of intended use;

2. Drawings in sufficient detail to allow staff to review the proposal for compliance with this code;

3. The tax identification number for the parcel;

4. A vicinity map to orient the parcel to its surrounding infrastructure;

5. Project identification (project name, location, developer and developer's address and contact information);

6. Concept drawings shall be either 8 ½" x 11" or 11" x 17" and shall include the following:

   a) Location and height of existing and proposed structures within the proposed development and within two hundred (200) feet of the proposed development;

   b) Location of fire hydrants and street-lights within two hundred fifty (250) feet of the proposed development;

   c) Property lines and dimensions indicating total site area, parking and driveway area, gross area of all buildings and structures, area of proposed landscaping indicated as a percentage of lot coverage by landscaping;

   d) North arrow;

   e) Proposed buildings, parking areas, drive-aisle widths, road or driveway lengths and landscaped areas. Indicate number and layout of proposed parking spaces;

   f) Locations of access, curb cuts, gutters, sidewalks and proposed driveways as well as proposed traffic and pedestrian circulation patterns;

   g) Public Improvements and dedications;

   h) Location and design of proposed walls, landscaping and exterior lighting;

i) Phasing plan, if any;

j) Description and hours of intended uses; and

k) Payment of the application fee set by fee resolution.

**D. RESIDENTIAL SITE PLAN REVIEW.** The site plan drawing shall include:

1. General:
   a) Dated drawings prepared on a 22" x 34" format;

   b) Indicated scale shall be no less than 1" = 40';

   c) Name of project/development, address and developer's name;

   d) Parcel dimensions;

   e) North arrow;

   f) Total site area;

   g) Parking and driveway area;

   h) Location of new buildings and structures;

   i) Location of existing buildings and structures;

   j) All existing sewer mains, water mains, fire hydrants, and electric lines;

   k) Building elevations with proposed materials of construction for new construction or exterior modifications of existing buildings; and

   l) Any further information related to the specific site development as requested by Cleveland Town Officials.

**E. COMMERCIAL SITE PLAN REVIEW. (Not a Subdivision)** The site plan drawings shall include:

a) Dated drawings prepared on a 22" x 34" format;

b) Indicated scale shall be no less than 1" = 40';

c) Name of project/development, address and developer's name;

d) Parcel dimensions;

e) North arrow;

f) Total site area;

g) Parking and driveway area;

h) Location and height of new buildings and structures;

i) Location and height of existing buildings and structures;

j) Setbacks for on-site and off-site structures;

k) Landscaped area (indicate percentage of total site area to be landscaped);

l) All existing and proposed sewer mains, water mains, fire hydrants and electric lines;

m) Building elevations with proposed materials of construction for new construction or exterior modifications of existing buildings;

n) Provide existing and proposed utility and lighting information;

o) Provide location and size of vehicular entrances and exits; and

p) Any further information related to the specific site development as requested by Cleveland Town Officials.

**F. BUILDING PERMIT.** Upon approval of the building and site plan drawings, and payment of all applicable fees, and compliance with all adopted building codes, the Building Official shall issue a building permit to the applicant. A permit shall be required in order to move any building or structure from one lot to another.

**G. INSPECTIONS.** The Building Official or other designated official shall inspect the project during construction through its completion to verify conformance with approved plans.

**H. REJECTED USES.** If an application does not meet the criteria set forth above, the Town shall notify the applicant stating specifically which criteria have not been satisfied.

**I. DISCLAIMER.** No permit shall be valid if any of the criteria listed in this section has not been met.

**2-3.5 CONDITIONAL USE REVIEW.** There are certain uses that, because of unique characteristics or the potential for detrimental impacts, may not be compatible in some areas of a zone or may be compatible only if certain conditions are imposed. The Planning Commission will evaluate all Conditional Use permit applications. The Planning Commission shall review and decide all applications for a Conditional Use permit according to the following procedure:

**A. PRE-APPLICATION CONFERENCE.** If determined necessary by the Planning Commission, an applicant shall attend a pre-application conference with the Planning Commission and other Town staff or departments to discuss the proposed improvements associated with the Conditional Use and the conditions that the staff would recommend to mitigate proposed adverse impacts. This meeting will allow other Town Departments to provide comments on the application.

**B. THE APPLICATION.** An applicant must pay all appropriate fees

and must file a complete application.

C. **PUBLIC HEARING.** The Planning Commission may conduct a public hearing on the Conditional Use Permit application and shall either approve, deny, or modify and approve the application. Upon receipt of a complete application, the Town Clerk shall provide reasonable notice as provided in **2-3.8 Notice** of this section, when it is determined that a public hearing is required.

D. **STANDARDS FOR REVIEW.** The Town shall not issue a Conditional Use permit unless the Planning Commission concludes that the application complies with the standards of review specific to the zone in which the use is proposed.

E. **TRANSFERABILITY.** A Conditional Use permit runs with the land.

F. **EXPIRATION.** Unless otherwise indicated in the final conditions, Conditional Use permits shall expire one (1) year from the date of initial approval, unless the conditionally permitted use has commenced on the site.

G. **ANNUAL REVIEW.** The Planning Commission may review Conditional Use permits on an annual basis for compliance with all final conditions of approval.

H. **REVOCATION.** If the Planning Commission or the Building Official determines that the holder of a Conditional Use permit is in violation of the terms or conditions upon which the permit was issued, the Town Clerk shall notify the permit holder and schedule a hearing before the Planning Commission at which the permit holder must show cause to the Planning Commission why the Conditional Use permit should not be revoked. If the Planning Commission determines that the terms or conditions of the permit have been violated, it shall cause the permit holder to specify how the holder will promptly comply with the terms and conditions of the permit, or it shall revoke the permit.

I. **APPEALS.** Appeals must be made pursuant to **2-3.17 Appeals** of

this section.

**2-3.6 SIGN PERMIT REVIEW.** This ordinance regulates to the maximum extent allowed by law.

**A. EXCEPTIONS.** The following signs are not regulated by this ordinance:

1. Signs of a governmental nature for the control of traffic and other regulatory purposes such as street signs, danger signs, railroad crossing signs and signs of public service companies indicating danger and aids to service or safety;

2. Signs, which are associated with public and quasi-public organization functions, which are clearly of a temporary nature;

3. Interior signs;

4. Campaign signs;

5. Flags, emblems, or insignias of any nation or political subdivision;

6. Signs not exceeding one square foot in area and bearing only property numbers, postal box numbers or names or occupants of premises;

7. Legal notices, identification information, or directional signs erected by governmental bodies;

8. Commemorative plaques of recognized historical agencies, or identification emblems or symbols of religious orders provided that no such plaque, symbol or identification emblem exceeds three square feet in area, and such plaque, symbol or emblem is placed flat against a building; and

9. Existing signage, which has been previously approved, shall not be required to comply with this Section insofar as the initial installation is concerned. All other requirements are applicable.

**B.** **NONCONFORMING SIGNS.** A nonconforming sign shall not be reconstructed, raised, moved, place, extended or enlarged unless said sign is changed so as to conform to all provisions of this Section. Alterations shall not be interpreted to include changing the text or copy of off-premises advertising signs, theater signs, outdoor bulletin or other similar signs which are designed to accommodate changeable copy.

**C.** **ABATEMENT.** The nonconforming sign provisions of this Section shall not be applicable to prohibited signs.

**D.** **PERMITS.** Except as provided in this code, it is unlawful to display, erect, relocate, or alter any sign without first submitting a sign permit application to the Planning Commission and obtaining a recommendation for a sign permit from the Planning Commission. When a Cleveland Town sign permit has been issued, it is unlawful to change, modify, alter, or otherwise deviate from the terms or conditions of said permit without prior approval of the Building Official and the Planning Commission. A written record of such approval shall be entered upon the original permit application and maintained in the files of the Building Official. The application for a sign permit shall be made by the owner or tenant of the property on which the sign is to be located, or his/her authorized agent, or a licensed sign contractor and shall be accompanied by the following plans and other information:

1. The name, address and telephone number of the owner or persons entitled to possession of the sign or control of the same and of the sign contractor or erector;

2. The location by street address of the proposed sign structure;

3. A site plan and elevation drawings of the proposed sign, caption of the proposed sign and elevations of building facades if the application is for a wall sign. The site plan shall include the proposed location of the sign in relation to the face of the building or to the boundaries of the lot on which it is situated;

4. Plans for freestanding signs requiring a building permit shall indicate the scope and structural detail of the work to be done, including details of all connections, guy lines, supports and footings, and materials to be used, stamped by a professional engineer licensed in the State of Utah;

5. Application for, and required information for such application, and electrical permit for all electric signs if the person building the sign is to make the electrical connection; and

6. A statement reflecting the signs value as personal property.

**E. EXEMPT SIGN CHANGES.** The following changes do not require a sign permit:

1. The changing of the advertising copy or message of signs specifically designed for the use of replaceable copy;

2. Electrical maintenance, repainting, or cleaning maintenance of a sign;

3. The repair of a sign;

4. Real estate signs no larger than six square feet;

5. Nameplate signs.

**F. TRAFFIC HAZARDS.** Signs or other advertising structure shall not be erected at the intersection of any streets or driveways in such a manner as to obstruct free and clear vision; or at any location where by reason of the position, shape or color, it may interfere with, obstruct the view of or be confused with any authorized traffic sign, signal device, or make use of words, phrases, symbols or characters in such manner as to interfere with, mislead or confuse vehicle operators.

1. At intersection streets and within the clear view area, there shall be no signs allowed, unless a sign is less than three (3) feet in height as measured from the average grade of the intersecting streets.

2. For signs over pedestrian ways, the clearance between the ground and the bottom of any projecting or ground sign shall not be less than eight (8) feet.

3. For signs over driveways for vehicular traffic, the minimum clearance shall be fourteen (14) feet.

4. For signs more than three (3) feet in height and having less than an eight (8) foot clearance, the front setback shall be the same as for buildings in that zoning district. In no case shall the front setback be less than eighteen (18) inches from the front property line as measured from the leading edge of the sign.

**G. SIGNS OVER PUBLIC PROPERTY.** No sign shall be located on publicly owned land or inside street rights-of-way except signs required and erected by permission of an authorized public agency. This restriction shall include, but not be limited to, handbills, posters, advertisements or notices that are fastened, placed, posted, painted or attached in any way upon any curbstone, lamp post, telephone pole, electric light or power pole, hydrant, bridge, tree, rock, sidewalk or street. No projecting sign attached to a building shall project over public property more than four feet and in no case be closer than four feet to curb line or edge of a street, whichever is more restrictive. Ground signs must be setback at least eighteen (18) inches from any public right-of-way.

**2-3.7 TELECOMMUNICATIONS.** All telecommunications regulations apply to both commercial and private low power radio services and facilities, such as cellular or Personal Communications Systems (PCS) and paging systems.

**A. TELECOMMUNICATIONS SIGNS.** Signs shall only be permitted if they are related to the health and safety of the general public. All proposed signs shall be submitted with the telecommunications facility application and are subject to review by the Planning Commission.

**B. REMOVAL.** The Building Official is empowered to require an un-maintained or abandoned low-power radio service antenna to be

removed from the building or premise when that antenna has not been repaired or put into use by the owner, the person having control, or the person receiving the benefit of the structure within thirty calendar days after notice is given to the owner, the person having control, or the person receiving the benefit of the structure.

C. **ABANDONMENT.** The applicant, or applicant's successor(s) and/or assignee(s) shall be responsible for the removal of unused telecommunications facilities within twelve (12) months of abandonment of use. If such tower is not remove by the property owner, then the Town may employ all legal measures, including as necessary, obtaining authorization from a court of competent jurisdiction, to remove the tower, and after removal may place a lien on the subject property for all direct and indirect costs incurred in dismantling and disposing of the tower, including court costs and reasonable attorney fees.

**2-3.8 NOTICE**. The Town shall provide notice of all public hearings that are required by this ordinance.

A. **PUBLIC HEARING REQUIREMENTS.** The Town Clerk shall provide reasonable notice of all public hearings and meetings, which notice shall contain a description of the property, with a brief explanation of the proposed use, and the date, place and time of the public hearing, which notice shall be:

1. Posted in at least three (3) public places in the Town. In addition on proposed annexations, re-zones, and major subdivision applications, if deemed necessary may be posted on the Town website; and

2. When required either published in or submitted to a newspaper of general circulation within the Town at least ten (10) days before the date of the Planning Commission and/or Town Council hearing.

B. **NOTICE TO AFFECTED ENTITIES.** When required by law the Town Clerk shall provide notice by first class mail to affected entities as defined in Section **2-2 Definitions** of this code.

C. **PURPOSE OF NOTICE.** The purpose of the notice is to reasonably inform surrounding property owners and jurisdictions of an application for zoning, multi-family, commercial or industrial development or a proposed modification to the General Plan. No minor omission or defect in the notice or mailing shall be deemed to impair the validity of the proceedings to consider the zoning application. If at or prior to the public hearing an omission or defect in the mailed notice is brought to the attention of the Planning Commission, it shall determine whether the omission or defect impairs or has impaired a surrounding property owner's ability to participate in the public hearing, upon which finding it shall continue the hearing on the application for zoning for at least fourteen (14) days. Any omission or defect in the mailed notice that is not brought to the commission's attention or that the commission finds did not impair a surrounding property owner's ability to participate in the hearing shall not affect the validity of the zoning proceedings.

D. **EFFECT OF NOTICE.** Proof that notice was given pursuant to subsection A above is prima facie evidence that notice was properly given. If notice given under authority of this section is not challenged as provided for under State law within thirty (30) days from the date of the hearing for which the challenged notice was given, the notice shall be deemed to have been adequate and proper.

**2-3.9 TERMINATION OF PROJECTS FOR INACTION.** Applicants must move their projects either to approval or denial in a reasonably expeditious manner. Upon fourteen (14) days written notice to the applicant, the Town may formally deny an application, which remains inactive for six (6) months. Delays occasioned by the Town shall not constitute cause for terminating an application. An applicant may appeal the Planning Commission's denial of a project for Inaction to the Town Council in the same manner as any other appeal. The Town Council may reinstate subject to conditions, or may deny reinstatement. If reinstatement is denied, the application is formally denied.

**2-3.10 PENALTIES.** Any person, firm, partnership, or corporation, and the principals or agents thereof violating or causing the violation of this Section, or a permit issued pursuant to this Section, shall be guilty of a Class "C" misdemeanor and punished upon conviction by a fine and/or imprisonment as provided for by

Utah State law.

**A.** In addition, the Town shall be entitled to bring a civil action to enjoin and/or abate the continuation of the violation.

**B.** Residents within the Town or owners of property within the Town may file an action to enjoin the continuation of a violation of this ordinance affecting their interests.

**2-3.11 GENERAL ENFORCEMENT AUTHORITY.** Whenever the Town finds that a violation of this ordinance or applicable State codes has occurred or continues to exist, the procedure outlined below shall be followed. The Town has the authority and power necessary to gain compliance with the provisions of the violated ordinance or statute. These powers include the power to issue notices of violation, to issue misdemeanor citations, to abate violations existing on public or private property, and to use any other remedies available under the Town ordinances and applicable State codes.

**2-3.12 NOTICE OF VIOLATION.** Whenever the Town determines that a violation of the ordinances or statues addressed by this Section has occurred or continues to exist, the Town shall serve a Notice of Violation upon the alleged violation by one of the methods described in **2-3.13 SERVICE OF NOTICES** below. Said notice shall include the following information:

1) The name of the property owner,
2) The street address, date and approximate time at which the violations were observed,
3) Number and title of all Ordinances section violated, and a description of the condition of the property that violates the stated sections,
4) All remedial action required to permanently correct outstanding violations, which may include corrections, repairs, demolition, removal or other appropriate action,
5) The specific date by which to correct the violations listed in the notice, which date shall be fourteen (14) days from the date of service,
6) An explanation of the consequences should the responsible person(s) fail to comply with the terms and deadlines stated in the Notice of Violation, which may include, but are not limited

to, civil penalties (fines), revocation of permits, withholding of future municipal permits, abatement of the violation, costs, administrative fees, and any other legal remedies,

7) An explanation of how the penalty shall be paid,
8) That civil penalties will begin to accrue immediately upon expiration of the date identified in the Notice of Violation to correct the violation(s) listed,
9) The amount of the civil penalty on each violation and that the penalty will continue to accrue daily until the property is brought into compliance,
10) An explanation that payment of an assessed fine shall not excuse the failure to correct the violations, nor shall it bar further enforcement action by the Town,
11) That only one Notice of Violation is required to be issued during any twelve (12) month period for violation of a given section of ordinance or statute, and that civil penalties begin to accrue immediately upon the observation of any subsequent violations of the same section of ordinance or statute,
12) An explanation of the right to request a hearing on the violation, the procedure for requesting a hearing, the possible outcomes of the hearing process, and the consequences of failure to request a hearing, and
13) The signature of the Planning Commission Chairman.

More than one notice of violation may be issued against the same responsible person(s), if the notices encompass different dates or different violations.

**2-3.13 SERVICE OF NOTICES.** Whenever a notice is required to be given under the provisions of this Section the notice shall be served by at least one of the following methods. The method selected shall be the most direct option practical under the particular circumstances of the violation.

1) Service directly to the owner(s) or responsible person(s); or if not practical,
2) Service by first class mail, postage prepaid, to the last known address of the owner(s) or responsible person(s); or if not practical,
3) Service by posting the notice conspicuously on or in front of the

property. The form of posted notice shall be as described in section **2-3.12 NOTICE OF VIOLATION** above or if not practical,

4) Service by publication in a newspaper of general circulation in Cleveland Town.

The failure of the owner(s) or responsible person(s) to actually receive any notice served in accordance with this Section shall not affect the validity of any proceedings taken under this Section.

**2-3.14 REMEDIATION PROCESS.** Upon service of a Notice of Violation, the responsible person(s) may choose one, and only one, of the following courses of action within a fourteen (14) day grace period:

1) Correct the violation as determined upon inspection by the Town or it's agents, and all applicable fines and citations shall be dismissed;
2) Submit a written request for a hearing before the Town Council, acting as the Appeal Authority to contest the violation;
3) Submit a written request to the Planning Commission for an extension of up to fourteen (14) days for correcting of the violation; or
4) Fail to correct the violation, to request a hearing, or to request an extension. This option shall result in daily accrual of fines, beginning at five o'clock p.m. of the fourteenth (14) day. Right to a hearing or extension is forfeited immediately upon expiration of the fourteen (14) day grace period.

**2-3.15 FINE RECOVERY PROCESS.** Correction of a violation shall not excuse the responsible person(s) from payment of any fines already accrued. Unpaid fines may be recovered by the Town by any legal means. The Town Clerks Office shall give the Town Council written notification of any fines which have not been paid within fourteen (14) days of the first day fines were assessed. The Council may act to pursue recovery by any legal means, including but not limited to:

1) Establishing a tax lien against real property owned by the responsible person(s), or
2) Obtaining a writ of execution on personal property owned by the responsible person(s), or

3) Obtaining a writ of garnishment on the paychecks, financial accounts and other income of financial assets of the responsible person(s).

**2-3.16 LICENSING.** Licenses or permits issued in violation of this Section, or based on fraudulent information, are null and void.

**2-3.17 APPEALS AND RECONSIDERATION PROCESS.** The applicant, staff, or any other person with standing to challenge a decision administering or interpreting this Section may appeal the decision as follows:

A. **ZONING ORDINANCE INTERPRETATION AND ADMINISTRATION.** All Town decisions, which interpret or administer this Section, may be appealed to the proper Appeal Authority within ten (10) days of final action, by filing notice of appeal with the Town Clerk.

B. **DISTRICT COURT REVIEW.** The District Court hears appeals of decisions of the Town Council and Town Attorney while acting as Appeal Authorities that are filed within thirty (30) days of the final decision of the Appeal Authority. See **2-4.1 POWERS AND DUTIES MATRIX.**

C. **STANDING TO APPEAL.** The following persons have standing to appeal a final action:

1) Any person who submitted written comment or testified on a proposal before the Planning Commission;

2) The owner of any property within three hundred (300) feet of the boundary of the subject site;

3) Any Town official, Board or Commission having jurisdiction over the matter;

4) The owner of the subject property.

D. **FORM OF APPEALS.** Appeals must be filed with the Town Clerk and must be by letter or petition, with the name, address, and

telephone number of the petitioner; his or her relationship to the project or subject property; and a comprehensive statement of the reasons for the appeal, including the specific provisions of law that are alleged to be violated by the action taken.

**E. WRITTEN FINDINGS REQUIRED.** The appellate body shall prepare detailed written Findings of Fact, which explain the circumstances of the body's decision and conclusions of Law in support of its decision.

**F. ACTION ON APPEALS TO A TOWN BODY.** The Town shall comply with the following standards for all appeals under this Section:

1) The Town, in consultation with the appellant, shall set a date for the appeal;

2) The Town shall notify the owner of the appeal date;

3) The Town body hearing the appeal shall consider the written appeal, final action and all other pertinent information from the appellant and the Planning Commission.

4) The Town body hearing the appeal may affirm, reverse, or affirm in part and reverse in part any properly appealed decision or may remand the matter with directions for specific areas of review or clarification. Appellate review is limited to consideration of only those matters raised in the written appeal and the staff's responses thereto, unless the body, by motion, enlarges the scope of the appeal to accept information on other matters; and

5) The Town shall prepare written findings for review within thirty (30) calendar days of the appellate decision.

**G. TOWN COUNCIL CALL-UP.** Within fifteen (15) calendar days of final action on any decision, the Town Council, on its own motion,

may call up for review any final action taken by the Planning Commission. The Town Clerk shall give prompt notice of the call-up to the Chairman of the Planning Commission together with the date set by the Council for consideration of the merits of the matter. The Clerk shall also provide notice as required below. In calling a matter up, the Council may limit the scope of the hearing to certain issues.

**H. NOTICE.** Notice of all appeals or call-ups shall be given by:

1) By mailing courtesy notice ten (10) days prior to the hearing to the applicant and all parties who requested mailed courtesy notice for the original action.

**I. STAY OF APPROVAL PENDING REVIEW OF APPEAL.** Upon call-up, or appeal, any approval granted by the Planning Commission or staff will be suspended until the reviewing body has taken final action on the appeal.

**J. APPEAL FROM THE TOWN COUNCIL.** The applicant or any person aggrieved by Town action on the project may appeal from the final action of the Town Council or Town Attorney to a court of competent jurisdiction. The decision shall stand, and those affected by the decision may act in reliance on it unless and until a court enters an interlocutory or final order modifying or suspending the decision.

**K. FINALITY OF ACTION.** Final action occurs when the deciding body has adopted and executed written Findings of Fact and Conclusions of Law on the matter in question.

**2-3.18 CONSTITUTIONAL TAKINGS REVIEW AND APPEAL.** To promote the protection of private property rights and to prevent the physical taking or exaction of private property without just compensation, the Town Council and all Commissions and Boards shall adhere to the following before authorizing the seizure or exaction of property:

**A. TAKINGS REVIEW PROCEDURE.** Prior to any proposed action to exact or seize property, the Town Attorney shall review the proposed action to determine if a constitutional taking requiring "just compensation" would occur. The Town Attorney shall review all

such matters pursuant to the guidelines established in subsection B below. Upon identifying a possible constitutional taking, the Town Attorney shall, in a confidential, protected writing, inform the Council, commission or board of the possible consequences of its action. This opinion shall be advisory only. No liability shall be attributed to the Town for failure to follow the recommendation of the Town Attorney.

B. **TAKINGS GUIDELINES.** The Town Attorney shall review whether the action constitutes a constitutional taking under the Fifth or Fourteenth Amendments to the Constitution of the United States, or under Article 1, 22 of the Utah Constitution. The Town Attorney shall determine whether the proposed action bears an essential nexus to a legitimate governmental interest and whether the action is roughly proportionate and reasonably related to the legitimate governmental interest. The Town Attorney shall also determine whether the action deprives the private property owner of all reasonable uses of the property. These guidelines are advisory only and shall not expand nor limit the scope of the Town's liability for a constitutional taking.

C. **APPEAL.** Any owner of private property who believes that his/her property is proposed to be "taken" by an otherwise final action of the Town may appeal the Town's decision to the Takings Appeal Board within thirty (30) days after the decision is made. The appeal must be filed in writing with the Town Clerk. The Takings Appeal Board shall hear and approve and remand or reject the Appeal within fourteen (14) calendar days after the appeal is filed. The Takings Appeal Board, with advice from the Town Attorney, shall review the appeal pursuant to the guidelines in subsection B herein. The decision of the Takings Appeal Board shall be in writing and a copy given to the appellant and to the Town Council, Commission or Board that took the initial action. The Takings Appeal Board's rejection of an Appeal constitutes exhaustion of administrative remedies rendering the matter suitable for appeal to a court of competent jurisdiction.

D. **TAKINGS APPEAL BOARD.** There is hereby created a three (3) member Takings Appeal Board. The Mayor shall appoint two (2) current members of the Planning Commission and the Town Attorney to serve on the Takings Appeal Board. If, at

any time, two (2) members of the Planning Commission cannot meet to satisfy the time requirements stated in subsection C above, the Mayor shall appoint a member or sufficient members to fill the vacancies.

**2-3.19 NOTICE MATRIX.**

Legal noticing requirements often change, therefore this section shall reference the most recent legal noticing requirements. See The Cleveland Town Clerks office for most recent noticing requirements.

# Chapter 2: Zoning Ordinance
## Section 2-4 Land Use Authorities & Appeal Authorities

2-4.1 POWERS & DUTIES MATRIX
2-4.2 TOWN COUNCIL
2-4.3 PLANNING COMMISSION
2-4.4 APPEAL AUTHORITY
2-4.5 BUILDING OFFICIAL
2-4.6 ZONING ADMINISTRATOR POWERS AND DUTIES

**2-4.1 POWERS & DUTIES MATRIX** Below is a matrix outlining the powers and duties of each land use authority and appeal authority.

| Decision To Be Made | Advisory Body | Deciding Body | Appellate Body | Time To Appeal |
|---|---|---|---|---|
| **General Plan: Adoption or Amendments** | Planning Commission | Town Council | District Court | 30 days from final decision |
| **Land Use Ordinance: Adoption or Amendments** | Planning Commission | Town Council | District Court | 30 days from final decision |
| **Annexation Policy Plan** | Planning Commission | Town Council | Town Attorney | 30 days from final decision |
| **Annexation Application** | Planning Commission | Town Council | Town Attorney | 30 days from final decision |
| **Appeal of Administrative Decision** | | Town Council | District Court | 30 days from final decision |
| **Conditional Use Permit** | | Planning Commission | Town Council | 30 days from final decision |
| **Nonconforming Uses Noncomplying Structures** | | Planning Commission | Town Council | 30 days from final decision |
| **Subdivision Ordinance** | Planning Commission | Town Council | District Court | 30 days from final decision |

| Decision To Be Made | Advisory Body | Deciding Body | Appellate Body | Time To Appeal |
|---|---|---|---|---|
| **Subdivision Application and Plat Approval** | Town Staff | Planning Commission | Town Council | 30 days from final decision |
| **Vacation or Amendment of a Subdivision Plat** | Planning Commission | Town Council | Town Attorney | 30 days from final decision |
| **Variances** | | Town Council | District Court | 30 days from final decision |
| **Amendment to Platted Street** | Planning Commission | Town Council | Town Attorney | 30 days from final decision |
| **Business License** | Planning Commission | Town Council | Town Attorney | 30 days from final decision |
| **Building Permit** | Planning Commission | Building Official | District Court | 30 days from final decision |
| **Permitted Uses** | | Planning Commission | Town Council | 30 days from final decision |

## 2-4.2 TOWN COUNCIL

### A. Appointments.

1. **Planning Commission**
   The Mayor, with the advice and consent of the Town Council shall appoint a Planning Commission for the Town of Cleveland.

2. **Appeal Authority**
   The Mayor, with the advice and consent of the Town Council, shall appoint an appeal authority or authorities to hear land-use

appeals and variances. By ordinance, Cleveland Town may designate a separate appeal authority to hear requests for variances than it designates to hear appeals. Also by ordinance, the Town may designate one or more separate appeal authorities to hear distinct types of appeals of land use authority decisions.

3. **Zoning Administrator**
The Town Council may appoint and fix compensation for a Zoning Administrator.

4. **Planning Administrator**
The Town Council may appoint a Planning Administrator subject to the prior recommendation of the Planning Commission.

## B. Adopt, Implement & Amend: Comprehensive Plan

1. **Adoption of Comprehensive Plan**
The Cleveland Town Council shall adopt a Comprehensive Plan. Which shall include elements on: Land Use, Transportation, Affordable Housing. An Annexation Policy Plan shall also be required in order for the Town to annex new property into the Town. The Cleveland Town Council shall also have the power to adopt addendum to the Comprehensive Plan or separate plans that include but are not limited to an: Affordable Housing Plan, Annexation Policy Plan, Capital Improvements Plan, Economic Development Plan.

2. **Implementation of Comprehensive Plan**
The Cleveland Town Council shall be responsible for implementing the goals, objectives and general intent of the Comprehensive Plan. Tools useable for implementing the Comprehensive Plan shall include but are not limited to the following:

    1) Land-Use Ordinance
    2) Zoning Map
    3) Subdivision Ordinance

4) Affordable Housing Plan
5) Annexation Policy Plan

3. **Amendment of Comprehensive Plan**
From time to time it may become necessary to amend the Comprehensive Plan to better reflect present and future goals and objectives. The Cleveland Town Council shall have the right to amend the Comprehensive Plan, provided that the Planning Commission has reviewed the amendments and made recommendations to the Town Council concerning those amendments and that the proper meetings and hearings have been held with proper notice for said meetings and hearings. **(See section: 2-3.19 NOTICE MATRIX of this title).**

## C. Adopt, Enforce & Amend: Zoning Map

1. **Adoption of Zoning Map**
The Cleveland Town Council shall adopt an official Zoning Map. Which shall be included as part of the Town's Comprehensive Plan.

2. **Enforcement of Zoning Map**
The Cleveland Town Council shall be responsible for enforcing the boundaries of each zoning district and the regulations in each zoning district. If there is dispute as to a zoning boundary it shall be interpreted by the Town Attorney acting as an Appeal Authority.

3. **Amendment of Zoning Map**
From time to time it may be necessary to amend the Zoning Map to better reflect present and future land-use patterns and objectives. The Cleveland Town Council shall have the right to amend the Zoning Map, provided that the Planning Commission has reviewed the map amendments and made its recommendations to the Town Council concerning those amendments and that the proper meetings and hearings have been held with proper notice for said meetings and hearings. **(See section: 2-3.19 NOTICE MATRIX of this title).**

## D. Adopt, Enforce & Amend: Land Use Ordinance

1. **Adopt Land Use Ordinance**
The Cleveland Town Council shall have the power to adopt all land use controls that it deems necessary to promote the goals and objectives of the Comprehensive Plan and to protect the public's: health, safety and welfare. This includes but is not limited to a land use or zoning ordinance.

2. **Enforcement of Land Use Ordinance**

The Cleveland Town Council shall have the power to enforce its adopted land use or zoning ordinance and shall act as the Land Use Authority for all of the different types of land use decisions listed above in: **2-4.1 POWERS & DUTIES MATRIX.**

3. **Amendment of Land Use Ordinance**
From time to time it may become necessary for an amendment to be made to the Cleveland Town Land Use Ordinance. The Cleveland Town Council shall have power to amend the Cleveland Town Land Use Ordinance provided that the Planning Commission has reviewed the proposed amendments and made its recommendations to the Town Council concerning those amendments and that the proper meetings and hearings have been held with proper notice for said meetings and hearings. **(See section: 2-3.19 NOTICE MATRIX).**

## E. Adopt, Enforce & Amend: Subdivision Ordinance

1. **Adopt Subdivision Ordinance**
The Cleveland Town Council shall have the power to adopt all land use controls that it deems necessary to promote the goals and objectives of the Comprehensive Plan and to protect the public's: health, safety and welfare. This includes but is not limited to the adoption of a subdivision ordinance.

2. **Enforcement of Subdivision Ordinance**
The Cleveland Town Council shall have the power to enforce its adopted Subdivision ordinance and shall act as the Land Use Authority for all of the different types of land use decisions listed above in: **2-4.1 POWERS & DUTIES MATRIX.**

3. **Amendment of Subdivision Ordinance**
From time to time it may become necessary for an amendment to be made to the Cleveland Town Subdivision Ordinance. The Cleveland Town Council shall have power to amend the Cleveland Town Subdivision Ordinance provided that the Planning Commission has reviewed the proposed amendments and made its recommendations to the Town Council concerning those amendments and that the proper meetings and hearings have been held with proper notice for said meetings and hearings.
**(See section: 2-3.19 NOTICE MATRIX).**

## 2-4.3 PLANNING COMMISSION

### A. PLANNING COMMISSION ESTABLISHED

1. **Establishment - Composition - Appointment of Members**
   a) Pursuant to authority granted in The State of Utah Land Use Development and Management Act, as amended the Cleveland Town Council hereby creates a Planning Commission within and for the Town to be known as the Cleveland Town Planning Commission.
   b) Such Commission shall consist of six (6) members, one of which shall be a Town Council member, that shall not be a voting Planning Commission Member. The other five (5) members shall be appointed by the Mayor with consent of the Town Council from among registered voters of the Town.
   c) The members shall be selected without respect to political affiliations and shall serve without compensation except for reasonable expenses.

2. **Terms of Office of Members - Filling Vacancies - Removal of Members**
   a) The terms of office for the Town Council member designated to serve as a member of the Planning Commission shall correspond to their tenure of office. The terms of office for the appointive members of the Planning Commission shall be two, four and six years, to

be arranged as follows: Two shall be appointed for two years, two shall be appointed for four years, and two shall be appointed for six years.

b) Vacancies occurring otherwise than through the expiration of terms shall be filled by appointment of the Mayor with consent of the Town Council.

c) Members may be removed from office after public hearing by a majority vote of the Town Council.

3. **Organization - Adoption of Rules - Record of Proceedings**
The Planning Commission shall elect a chairman from its membership and shall adopt rules for its own organization and for the transaction of its business not in conflict with this section or any other local, state or federal law. The Planning Commission shall be required to keep a record of its proceedings as detailed in Utah State law.

4. **Employees -Expenditures**
The Planning Commission may make recommendations to the Town Council regarding the appointment of a Planning Administrator. The Planning Commission may also appoint such other employees and staff as it may deem necessary for its work and may contract with Town planners and other consultants provided its expenditures shall be within the amounts appropriated for that purpose by the Town Council.

**B. PREPARE COMPREHENSIVE PLAN**

1. It shall be the function and duty of the Planning Commission, after holding public hearings, to create, adopt and certify to the Town Council, a recommended Comprehensive Plan for the physical development of the Town including any areas outside of its boundaries, which in the Commissions judgment, bear relation to the planning of the Town. Where the plan involves territory outside the boundaries of the Town, action shall be taken with the concurrence of the county or other municipal legislative bodies concerned.

2. The Comprehensive Plan, with its accompanying maps, plats, charts and descriptive and explanatory material, shall show the Planning Commission's recommendations for the said physical

development and shall include among other things:

a) Transportation and Circulation Element.
b) Land use Element
c) Annexation Element

**C. PREPARE LAND USE ORDINANCE**

1. It shall be the function and duty of the Planning Commission, after holding public hearings, to create, adopt and certify to the Town Council, a recommended Land Use Ordinance to guide the physical development of the Town and to aid the Town, in meeting goals and objectives set forth in the Cleveland Town Comprehensive Plan.

2. The Land Use Ordinance shall separate the Town into distinct zoning districts that shall each have their own regulations to guide development in their respective districts.

**D. PREPARE SUBDIVISION ORDINANCE**

1. It shall be the function and duty of the Planning Commission, after holding public hearings, to create, adopt and certify to the Town Council, a recommended Subdivision Ordinance to guide the physical development of large-scale development within the Town. The Subdivision Ordinance shall hold to the spirit of the Cleveland Town Comprehensive Plan and shall aid the Town, in meeting goals and objectives set forth in the Cleveland Town Comprehensive Plan.

2. The Subdivision Ordinance shall provide distinct regulations for the development of: Residential Subdivisions, Large Scale Developments, Non-Residential Subdivisions, Condominium Projects, Planned Unit Developments (PUD), mobile home parks, recreational vehicle courts.

**E. RECOMMEND AMENDMENTS AND ZONING CHANGES**

1. It shall be the function and duty of the Planning Commission, after holding public hearings, to make recommendations to the Town Council for amendments and zone changes.

   a) The Planning Commission shall make recommendations to the Town Council for: Comprehensive Plan

amendments, Land Use Ordinance amendments, Subdivision Ordinance amendments, and Zoning changes.

F. **PREPARE REPORTS AND RECOMMENDATIONS & ENTRY UPON LAND**

1. It shall be the function and duty of the Planning Commission to prepare reports and recommendations to the Town Council concerning all land use decisions for which the Planning Commission has acted as an advisory body to the Town Council. See above the: **2-4.1 POWERS & DUTIES MATRIX**. The Planning Commission may also recommend to the executive or legislative officials programs for public improvements and the financing thereof.

2. The Planning Commission, its members, and employees, in performance of its functions, may enter upon any land at reasonable times to make examinations and surveys and place and maintain necessary monuments and marks thereon.

G. **PLANNING COMMISSION AS LAND USE AUTHORITY**

The Cleveland Town Planning Commission shall act as the Land Use Authority on all the land use decisions listed above in: **2-4.1 POWERS & DUTIES MATRIX.**

## 2-4.4 APPEAL AUTHORITY

A. **APPEAL AUTHORITY ESTABLISHED**

1. An Appeal Authority is hereby established in the Town of Cleveland, Utah and the Cleveland Town Council shall hereby be established as the Appeal Authority for the Town of Cleveland, and shall have the power to act on all appeals and variances of all land use decisions in which, the Town Council or any of its members was not already a land use authority. **See 2-4.1 POWERS & DUTIES MATRIX.**

2. An Appeal Authority is hereby established in the Town of Cleveland, Utah and the Town attorney for the Town of Cleveland, Utah shall act as the Appeal Authority on all land use decisions which are listed above in: **2-4.1 POWERS &**

## DUTIES MATRIX.

**B. HEAR AND DECIDE LAND USE APPEALS**

It shall be the power and duty of the Appeal Authority to hear and decide only land use appeals pertaining to this Title. A person may not appeal, and the Appeal Authority may not consider, any zoning ordinance amendments. Appeals may not be used to waive or modify the terms or requirements of the land use ordinance.

1. **STANDARDS FOR REVIEW OF APPEALS**

a) An applicant, a board or officer of the municipality, or any person adversely affected by a Cleveland Town land use authority's decision administering or interpreting this Title may, appeal that decision to the Appeal Authority by alleging that there is an error in any order, requirement, decision, or determination made by the land use authority in the administration or interpretation of this Title.

b) The person or entity making the appeal has the burden of proving that an error has been made in administering this Title.

c) It shall be required of an adversely affected party to present to the Appeal Authority every theory of relief that it can raise in district court. The Appeal Authority shall determine the correctness of a decision of the land use authority in its interpretation and application of the Town's land use ordinances. **(See section: 2-3.17 APPEALS AND RECONSIDERATION PROCESS)**

d) An appeal filed in accordance with this section stays all proceedings in the appeal action, unless the officer from whom the appeal is taken certifies to the Appeal Authority that by reason of facts stated in the certificate the stay would in his/her opinion cause imminent peril to life or property.

In such cases, proceedings shall not be stayed otherwise than by restraining order which may be granted by the Appeal Authority or by the district court on application and notice and on due cause shown.

e) The Appeal Authority shall fix the time for hearing any appeal within thirty (30) days of the date of filing such appeal with the Town Clerk and shall give public notice thereof in accordance with Utah Open and Public Meetings Act, as well as notice to the parties in interest. **(See also section: 2-3.19 NOTICE MATRIX for noticing requirements)**

f) Proceedings and hearings before the Appeal Authority shall be had pursuant to rules adopted by the Town Council and in conformance with general principles of due process. Any party in interest may appear at such hearing in person, by agent, or by an attorney of his/her choice.

g) Notwithstanding the above, appeals from a Land Use Authority's decision on a subdivision application shall proceed according to **2-10.8 SUBDIVISION APPEAL AUTHORITY.**

## C. HEAR AND DECIDE VARIANCES

Any person or entity desiring a waiver or modification of the requirements of a land use ordinance as applied to a parcel of property that he owns, leases, or in which he holds some other beneficial interest may apply to the Appeal Authority for a variance from the terms of the ordinance **(See section: 2-3.19 NOTICE MATRIX for noticing requirements)**.

### 1. STANDARDS FOR REVIEW OF VARIANCES

The Appeal Authority may grant a variance only if **all** of the following are met:

a) Literal enforcement of the ordinance would cause an unreasonable hardship for the applicant that is

not necessary to carry out the general purpose of the land use ordinances;

(i) In determining whether or not enforcement of the land use ordinance would cause unreasonable hardship, the appeal authority may not find an unreasonable hardship if the hardship is self-imposed or economic. An unreasonable hardship shall not be found unless the alleged hardship:

(1) is located on or associated with the property for which the variance is sought; and

(2) comes from circumstances peculiar to the property, not from conditions that are general to the neighborhood.

b) There are special circumstances attached to the property that do not generally apply to other properties in the same zone;

(i) In determining whether or not there are special circumstances attached to the property, the appeal authority may find that special circumstances exist only if the special circumstances:

(1) relate to the hardship complained of; and

(2) deprive the property of privileges granted to other properties in the same zone

c) Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zone;

d) The variance will not substantially affect the general plan and will not be contrary to the public interest; and

e) The spirit of the land use ordinance is observed and substantial justice done.

2. **APPLICANT HAS THE BURDEN OF PROOF**
The applicant shall bear the burden of proving that all of the conditions justifying a variance have been met.

3. **VARIANCE RUNS WITH THE LAND**
It shall be noted that a variance runs with the land and not the applicant.

4. **USE VARIANCE PROHIBITED**
In no circumstance shall the Appeal Authority grant a use variance.

5. **APPEAL AUTHORITY MAY IMPOSE ADDITIONAL REQUIREMENTS**
In granting a variance, the Appeal Authority may impose additional requirements on the applicant that will:

a) mitigate any harmful affects of the variance; or

b) serve the purpose of the standard or requirement that is waived or modified.

**D. INTERPRET ZONING MAP**
The Town Attorney acting as the Appeal Authority shall have the power to interpret the zoning map in the event that a disputation occurs. If a zone boundary is approximately at a street, property line or right of way the zone boundary shall be considered that street, property line or right of way. If further interpretation is needed then the scale on the official zoning map shall be used. Any further disputation as to a zoning boundary shall be decided by the discretion of the acting Appeal Authority.

**E. TAKINGS APPEAL BOARD**

There is hereby created a Takings Appeal Board. The Cleveland Town Attorney along with two (2) Planning Commission members shall serve as the Takings Appeal Board. If at any time there is not a sufficient number of Planning Commission members to act as the Takings Appeal Board the Mayor shall appoint a member or members to fill the vacancies. (See section: 2-3.18 CONSTITUTIONAL TAKINGS REVIEW AND APPEAL).

## F. DISTRICT COURT REVIEW OF APPEAL AUTHORITY DECISION

1. Any person adversely affected by any decision of the Appeal Authority may petition the district court for a review of the decision.

2. In the petition, the plaintiff may only allege that the Appeal Authority's decision was arbitrary, capricious, or illegal.

3. a) The petition is barred unless it if filed within thirty (30) days after the Appeal Authority's decision is final.

   b) The time under (3) a) to file a petition is tolled from the date a property owner files a request for arbitration of a constitutional taking issue with the private property ombudsman under Section 63-34-13, (Utah Code Annotated 1953 as amended) until thirty (30) days after:

      (1) the arbitrator issues a final award; or

      (2) the private property ombudsman issues a written statement under Section 63-34-13(4)(b), (Utah Code Annotated, 1953 as amended) declining to arbitrate or to appoint an arbitrator.

   c) A tolling under Subsection (3) b)(i) operates only as to the specific constitutional taking issues that are subject of the request for arbitration filed with the private property ombudsman by a property owner.

   d) A request for arbitration filed with the private property

ombudsman after the time under Subsection (3) a) to file a petition has expired does not affect the time to file a petition.

4. a) The Appeal Authority shall transmit to the district court the record of its proceedings including its minutes, findings, orders and, if available, a true and correct transcript of its proceedings.

b) If the proceeding was recorded, a transcript of that recording is a true and correct transcript for purposes of this subsection.

5. a) (i) If there is a record, the district court's review is limited to the record provided by the Appeal Authority.

(ii) The court may not accept or consider any evidence outside the Appeal Authority's record unless that evidence was offered to the Appeal Authority and the court determines that it was improperly excluded by the Appeal Authority.

b) If there is no record, the court may call witnesses and take evidence.

6. The court shall affirm the decision of the Appeal Authority if the decision is supported by substantial evidence in the record.

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

b) (i) Before filing a petition under this section or a request for mediation or arbitration of a constitutional taking issue under Section 63-34-13, (Utah Code Annotated 1953 as amended), the aggrieved party may petition the Appeal Authority to stay its decision.

(ii) Upon receipt of a petition to stay, the Appeal Authority may order its decision stayed pending district court review if the Appeal Authority finds it to be in the best interest of the Town.

After a petition is filed und this section or a request for mediation or arbitration of a constitutional taking issue is filed under Section 63-34-13, (Utah Code Annotated, 1953 as amended), the petitioner may seek an injunction from the district court staying the Appeal Authority's decision.

## 2-4.5 BUILDING OFFICIAL

### A. ISSUE BUILDING PERMIT

It shall hereby be the power and duty of the Town Building Official to issue building permits for the construction of buildings and structures within the Town of Cleveland. Such permit shall not be issued until after the Planning Commission has reviewed the application for a building permit and has determined that the building or structure being applied for is in conformance with all Town land use ordinances and codes or that a variance has been obtained from the Appeal Authority for the construction of the building or structure.

### B. INSPECTIONS

1. The Town Building Official shall have the right to inspect any building or structure within the Town of Cleveland, provided that said inspection is done at a reasonable hour and the property owner has been notified.

2. All fees and costs associated with an inspection of a property, building, structure or development shall be the responsibility of the property owner in who's property, building, structure or development is being inspected. The Town of Cleveland shall bear the responsibility of all inspections that are specifically requested by the Town, except such inspections that are considered mandatory in the normal construction phase of any building, structure or development.

## 2-4.6 ZONING ADMINISTRATOR

The Cleveland Town Zoning Administrator shall act as the Land Use Authority on all the land use decisions listed above in: **2-4.1 POWERS & DUTIES MATRIX.**