

CITY OF BOX ELDER ORDINANCE # 708
TO AMEND BOX ELDER CODE OF ORDINANCES, CHAPTER 28 - PLANNING

WHEREAS, the City of Box Elder seeks to enhance the clarity and consistency of its Planning ordinances.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Box Elder that Box Elder Code of Ordinances, Chapter 28, Planning be amended to read as follows:

Chapter 28 PLANNING

ARTICLE I. IN GENERAL

Secs. 28-1—28-17. Reserved.

ARTICLE II. PLANNING COMMISSION

Sec. 28-18. Official name.

The official name of the Planning Commission created hereunder shall be known as "Box Elder City Planning Commission," hereafter referred to as "Planning Commission" or "Commission."

(Ord. No. 650, § 33.1.1, 5-1-2020)

Sec. 28-19. Establishment and composition.

- (a) The Council shall appoint a Commission to be known as the Box Elder City Planning Commission.
- (b) The Planning Commission shall consist of no less than five (5) and no more than seven (7) voting members, as pursuant to SDCL §11-4-11, shall be appointed by the Common Council, and hold office as set forth by SDCL ch. §11-4. All voting members shall be residents of the City.
- (c) The Council may, temporarily add a member of to the Planning Commission who is a resident of an area affected by a proposed zoning and subdivision ordinance outside the corporate limits of the City for the purpose of carrying out any of the provisions of SDCL §11-6-26 to §11-6-38.
- (d) Additional non-voting advisory members can be added as the Council deems necessary pursuant to SDCL §11-6-7. The Council may also contract with planners, engineers, architects, and other consultants as well as federal, state, and local agencies for such services as it may require to carry out City business, such as an Ellsworth Air Force Base representative who may sit as an ex officio member of the Planning Commission.
- (e) Commissioners may be compensated by a stipend for each meeting attended. The amount of the stipend shall be set by the City Council by resolution during the required annual salary resolution.

(Ord. No. 561, § 33.01.02, 3-15-2016; Ord. No. 650, § 33.1.2, 5-1-2020)

Sec. 28-20. Powers and duties.

The Planning Commission shall carry out its functions in accordance with SDCL ch. §11-6 and shall have all the powers, duties and responsibilities as set forth in said statutes and this Code. The Planning Commission shall govern all territory with the statutory jurisdiction of the City.

- (a) The Planning Commission shall recommend the boundaries of the City's zoning districts and appropriate regulations to be enforced therein.
- (b) The Planning Commission shall hold public hearings, subject to the notice requirements provided in SDCL §11-4-4, before submitting its recommendation to the Council. The Council may not hold its public hearings or take action until it has received the recommendation of the Commission.
- (c) All public officials shall, upon request, furnish to the Planning Commission, within a reasonable time, such available information as it may require for its work. The Commission, its members and employees, in the performance of its functions, may, after thirty (30) day's written notice by certified mail to a landowner, enter upon any land, make examinations and surveys, and place and maintain necessary monuments and marks thereon. In general, the Commission has all powers necessary to enable it to fulfill and perform its functions, promote municipal planning, or carry out the purposes of this chapter.
- (d) The Planning Commission shall be responsible for the City's comprehensive plan that supports the vision of the City by the Council and the Mayor and shall recommend to the Council any addition, amendment, extension, or revision thereto.
- (e) The Commission shall provide recommendations to the Council as needed on land use applications to ensure that the City's growth is managed in compliance and conformance to the City's comprehensive plan and land use ordinances.
- (f) The Commission shall recommend to the Council regulations governing land use and the subdivision of land within the City's jurisdiction to maintain the vitality and sustainability of the City. Such regulations may provide for:
 - (1) the harmonious development of the City and its surrounding area;
 - (2) for the coordination of streets within subdivisions with other existing or planned streets or with other features of the comprehensive plan;
 - (3) for adequate open spaces for traffic, recreation, light, and air; and for a distribution of population and traffic which will tend to create conditions favorable to health, safety, convenience, or prosperity.
- (f) The Commission shall adopt and recommend to the Council all tax increment financing project plans pursuant to SDCL §11-9-13.
- (g) The Commission shall have all other powers granted by law under SDCL Title §11 and not otherwise restricted by ordinance.

(Ord. No. 561, § 33.01.03, 3-15-2016; Ord. No. 650, § 33.1.3, 5-1-2020, §33.1.14, 5-1-2020)

State law reference(s)—Comprehensive city planning, SDCL ch. §11-6.

Sec. 28-21. Members—Qualifications.

Any resident of the City who is a citizen of the United States may qualify to be a member of the Planning Commission, except a person having been convicted with the last five years of a felony or of a misdemeanor involving moral turpitude. Nominated members should demonstrate a basic understanding of the Commission and applicable rules.

(Ord. No. 561, § 33.01.04, 3-15-2016; Ord. No. 650, § 33.1.4, 5-1-2020)

Sec. 28-22. Members—Terms.

- (a) The term of each Planning Commissioner appointed to, and currently serving, shall be continued until expiration of the original term, or until the Commissioner resigns or has been removed for cause.
- (b) Each Commissioner appointed to the Planning Commission, including alternate members, shall be appointed for a term of five years to expire May 1 of the fifth year. Commission terms should be equally distributed to conclude on odd and even years.

(Ord. No. 561, § 33.01.05, 3-15-2016; Ord. No. 650, § 33.1.5, 5-1-2020)

Sec. 28-23. Members—Removal.

- (a) Planning Commissioner(s) may be removed by a majority vote of the Council for lack of attendance, incompetence, malfeasance, or other cause.
- (b) Any member may request to be heard in executive session prior to said vote.
- (c) All Planning Commissioners or citizens appointed to committees shall attend as assigned. Those individuals who miss three (3) or more consecutive scheduled committee meetings, or more than five (5) meetings in any twelve (12) month period, may be subject to removal from the committee by the Planning Commission, or from the Planning Commission by the Council.

(Ord. No. 561, § 33.01.06, 3-15-2016; Ord. No. 650, § 33.1.6, 5-1-2020)

Sec. 28-24. Vacancies.

Any vacancy in a membership on the Planning Commission shall be filled for the unexpired term in the same manner as for appointment.

(Ord. No. 561, § 33.01.07, 3-15-2016; Ord. No. 650, § 33.1.7, 5-1-2020)

Sec. 28-25. Commission bylaws.

The Planning Commission shall during the first meeting each January elect from its members a chairperson and vice-chairperson. The chairperson shall chair all meetings and proceedings. In the chairperson's absence, the vice-chairperson shall conduct the meetings. The Commission may establish bylaws to govern the conduct and procedural rules of the Commission meetings and to provide for the election of Commission officers.

(Ord. No. 561, § 33.01.09, 3-15-2016; Ord. No. 650, § 33.1.9, 5-1-2020)

Sec. 28-26. Commission meetings.

Planning Commission meetings shall be held at City Hall at 7:00 p.m. on each Monday of the week preceding each regular City Council meeting. If such a regular meeting day falls upon a recognized holiday, then the chairperson may reschedule the meeting. The Commission chairperson or vice-chairperson may call a special meeting of the Commission at their discretion. In the case where there is no agenda items presented to the planning office on or before 12:00 noon on the Wednesday prior to the regular scheduled meeting, the Planning Commission chairperson may cancel the meeting. The chairperson may also reschedule meetings due to inclement weather or other such emergencies.

(Ord. No. 561, § 33.01.10, 3-15-2016; Ord. No. 650, § 33.1.10, 5-1-2020)

Secs. 28-27—28-45. Reserved.

ARTICLE III. COMPREHENSIVE PLAN

Sec. 28-46. Recommendation of comprehensive plan as a whole, or in part.

- (a) The Planning Commission shall propose to the Council the comprehensive plan as a whole by a single resolution or, as the work of making the whole comprehensive plan progresses, may from time to time propose a part or parts thereof, any such part to correspond generally with one or more of the functional subdivisions of the subject matter of the plan.
- (b) Before recommendation to the Council of the comprehensive plan or part thereof, the Planning Commission shall hold at least one (1) public hearing. Notice of the time and place of which shall be given at least ten (10) days in advance of publication in a newspaper having general circulation in the City.
- (c) The Planning Commission shall submit the recommended comprehensive plan or part thereof to the Council for its consideration.
 - (1) The adoption by the Council of the plan or any part, amendment or additions, shall, following the same type of notice and public hearing as required by SDCL §11-6-17, be by resolution carried by the affirmative votes of not less than a majority of all the members of the Council.
 - (2) The resolution shall refer expressly to the maps, descriptive matter, and other matters intended by the Council to form the whole or part of the plan.
 - (3) The action taken shall be recorded on the adopted plan or part thereof, by the identifying signature of the Mayor of the City.
 - (4) If a zoning ordinance is included as an adjunct to the comprehensive plan, or any part, amendment or addition, that zoning ordinance shall be subject to the provisions of SDCL §11-4-5.
 - (5) The action of the Council, in adopting the comprehensive plan, shall be filed with the City's Auditor or Clerk.
 - (6) A summary of the action of the Council shall be:
 - (a) prepared by the City's Finance Officer, Auditor, Clerk, or Planning Commission;
 - (b) reviewed by the City's Attorney;
 - (c) published once in a newspaper having general circulation in the City; and
 - (d) take effect on the twentieth day after its publication.
 - (7) Any summary published under the provisions of this chapter shall contain a notification that the public may inspect the entire comprehensive plan or any part, adjunct, amendment, or additions to the comprehensive plan at the office of the City Auditor or Clerk during regular business hours.
 - (8) The referendum provisions of SDCL §9-20-6 to §9-20-16, inclusive, shall be applicable to the action of the Council. If the voters shall reject the proposed comprehensive plan, the council may cause the Planning Commission to revise the plan or parts thereof, and the Council may adopt the same as revised and file and publish the same as required above.

(Ord. No. 650, § 33.1.13, 5-1-2020)

Sec. 28-47. Duty; content; amendment.

- (a) *Duty of Commission.* It shall be a function and duty of the Planning Commission to propose a plan for the physical development of the City, including any areas outside of the boundary and within its planning jurisdiction which, in the Planning Commission's judgment bear relation to the planning of the City.

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- (b) *Content.* The comprehensive plan, with the accompanying maps, plats, charts and descriptive and explanatory matter, shall show the Planning Commission's recommendation for the said physical development, and may include among other things:
- (1) the general location, character and extent of streets, bridges, viaducts, parks, parkways, waterways and waterfront developments, playgrounds, airports and other public ways, grounds, places and spaces;
 - (2) the general location of public schools, of public buildings and other public property;
 - (3) a zoning ordinance for the regulation of the height, area, bulk, location and use of private and public structures and premises, and of population density as may be provided by law may be included as an adjunct to the comprehensive plan;
 - (4) the general location and extent of public utilities and terminals, whether publicly or privately owned, for water, light, power, heat, sanitation, transportation, communication and other purposes;
 - (5) the acceptance, widening, removal, extension, relocation, narrowing, vacation, abandonment, or change of use of any of the foregoing public ways, grounds, places, spaces, building, properties, utilities or terminals;
 - (6) the general location, character, layout and extent of community centers and neighborhood units, and the general character, extent and layout of the re-planning of blighted districts and slum areas.
- (c) *Amendment.* The Planning Commission may from time to time amend, extend or add to the plan, or carry any part of the subject matter into greater detail.

(Ord. No. 561, §§ 33.01.11, 33.01.13, 3-15-2016; Ord. No. 650, § 33.1.11, 5-1-2020)

State law reference(s)—Preparation and content of municipal comprehensive plan, SDCL 11-6-14; plan may be proposed in whole or in part, SDCL 11-6-16; public hearing required before recommendation of plan to council, SDCL 11-6-18.

Sec. 28-48. Surveys and studies required; purpose.

In the preparation of the comprehensive plan, the Planning Commission shall make careful and comprehensive surveys and studies of the existing conditions and probable future growth of the City and its surrounding area. The plan shall be made with the purpose of guiding and accomplishing a coordinated, adjusted, and harmonious development of the City which will, in accordance with existing and future needs, best promote health, safety, morals, order, convenience, prosperity or the general welfare, as well as efficiency and economy in the process of development.

(Ord. No. 561, § 33.01.12, 3-15-2016; Ord. No. 650, § 33.1.12, 5-1-2020)

Sec. 28-49. Reserved.

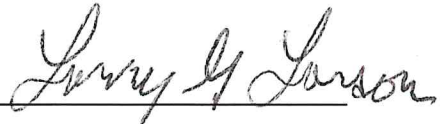
ARTICLE IV. BOARD OF ADJUSTMENT

Sec. 28-50. Board of adjustment.

- (a) Established; purpose, duties, and powers; meetings; voting.
- (1) The City Council has established a Board of Adjustment. The Planning Commission shall act as the Board of Adjustment, and may, in appropriate cases and subject to appropriate conditions and safeguards, grant variances to the terms of Chapter 44 Zoning.
 - (2) The Planning Commission Chair shall act as chair of the board and the Planning Director shall act as its secretary. The chair or acting chair of the Board may administer oaths and compel the attendance of witnesses.
 - (3) The Board shall meet at the call of the Mayor, Chair, and at such other items as the Board may determine at a fixed time and place.
 - (4) All meetings of the Board shall be open to the public. The Board shall keep minutes of its proceedings showing the vote of each member upon each question, or if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the City's Finance Office and shall be a public record.
 - (5) The Board shall have the power to call on any other City departments and personnel for assistance in the performance of its duties, and it shall be the duty of such other City departments and personnel to render all such assistance as may be reasonably required.
 - (6) In the case of all appeals, the concurring vote of at least two-thirds of the members of the Board shall be necessary to reverse any order, requirement, decision or determination of any administrative official, to effect any variation in such ordinance.
 - (7) The Board may adopt rules of procedure.
 - (8) The Board shall have the power to:
 - (i) Hear and decide appeals wherein it is alleged there is an error in any order, requirement, decision, or determination made by an administrative official in the enforcement of this chapter or of any ordinance adopted pursuant to;
 - (ii) Authorize upon appeal in specific cases such variance from terms of the ordinance not contrary to the public interest, if, owing to special conditions, a literal enforcement of the provisions of the ordinance will result in unnecessary hardship and so that the spirit of the ordinance is observed and substantial justice done; and
 - (iii) Hear and determine conditional uses as authorized by the zoning ordinance. The uses shall be determined by an affirmative majority vote of the present and voting members of the Board;


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- (iv) To hear and decide, in accordance with the provisions of this chapter, requests for special exceptions to or for interpretation of the zoning map;
 - (v) Study and report on all proposed amendments to this article; further, to review annually this article and on the basis of such review, suggest amendments thereto.
- (b) Appeals. Appeals to the Board may be taken by any person aggrieved or by any officer, department, board, or bureau of the municipality affected by any decision of the administrative officer to grant or deny the permit. No other appeal such as any relating to a ministerial act or other preliminary act to bring an application or matter before the Board for hearing and a final decision on the merits is authorized.
- (i) Such appeal shall be taken within a reasonable time, as provided by the rules of the Board, but not to exceed twenty one (21) days, by filing with the officer from whom the appeal is taken and with the Board a notice of appeal specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the Board all the papers constituting the record upon which the action appealed from was taken. All appeals relating to a particular action or property shall be consolidated and heard on an expedited basis.
 - (ii) An appeal to the Board stays all proceedings in the action appealed from, except ministerial or other preliminary acts necessary to allow consolidated appeals on all matters prior to final decision by the Board, unless the officer from whom the appeal is taken shall file a certificate that by reason of facts stated in the certificate a stay would in their opinion cause imminent peril to life or property. In such case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board or by a court of record, on application, on notice to the officer from whom the appeal is taken and on due cause shown.
- (c) Notice and hearing by Board. The Board shall hold at least one (1) public hearing on the appeal. Notice of the time and place of the hearing shall be given once at least ten (10) days in advance by publication in a legal newspaper of the City. Due notice shall be given to the parties in interest. Any party may appear at the hearing in person or by agent or by attorney.
- (d) Decisions of the Board. The Board shall decide the appeal within sixty (60) days of receiving a notice of appeal. The Board may, in conformity with the provisions of this chapter and §11-4 of SDCL, reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from and may make such order, requirement, decision, or determination as ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken. As to all other decisions, the Board may make initial determinations as provided by statute and applicable zoning ordinance.
- (e) Contesting decision of Board. Any person or persons, jointly or severally, or any officer, department, board, or bureau of the City, aggrieved by any decision of the Board may present to a court of record a petition for writ of certiorari, duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of the illegality. Such petition shall be presented to the court within thirty (30) days after the filing of the decision in the office of the Board. The Board shall respond to the petition within thirty days of receiving the notice of the filing and shall simultaneously submit the complete record of proceedings of the Board, in the form of a return on a petition for writ, without need for a court order or formal issuance of writ. The allowance of the writ shall not stay proceedings upon the decision appealed from, but the court may, on application, on notice to the Board and one due cause shown, grant a restraining order.

Dated this 20th day of December, 2022.



City of Box Elder

ATTEST:



Nicole Schneider
City Administrator/Chief Finance Officer

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Second Reading: 12/20/2022
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