

# Article 3

## Administration

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### 3.100 Planning Commission

1. Membership. A Planning Commission is hereby created and appointed by the Mayor with the concurrence of the City Commission. There shall be eight regular voting members of the Planning Commission.
2. Terms and Qualifications
  - a) All applicants' names for Planning Commission vacancies shall be forwarded to the City Commission with the Planning Commission's recommendation.
  - b) All Commissioners shall be appointed for terms of three years unless the appointment is to fill an unexpired vacancy.
  - c) Vacancies that occur during a commissioner's term shall be filled for the balance of the unexpired term.
  - d) Planning Commissioners shall be at least 18 years of age.
  - e) Three members shall reside in the extra-territorial zone area. The remaining members must live in the City of St. Marys or own real estate located in the corporate limits of St. Marys.
  - f) Planning Commissioners may be removed for cause, including, but not limited to, failure to attend meetings, abuse of office, serious conflict of interest, and abusive conduct, by a 2/3 vote of the City Commission. Any Planning Commissioner removed from office shall have the right to file an appeal within 14 days of removal, for a full hearing of the matter before the City Commission.
3. Duties of the Planning Commission. The duties of the Planning Commission shall include, but not be limited to the following:
  - a) Comprehensive Plan. The Planning Commission is authorized to make or cause to be made a comprehensive plan for the development of the City of St. Marys and the extra-territorial zone. The comprehensive plan shall constitute the basis or guide for public action to insure coordinated and harmonious development or redevelopment that will best promote the health, safety, and welfare as well as the efficient expenditure of public funds.
  - b) Annual Review of the Comprehensive Plan. Once each year in January, the Planning Commission shall review or reconsider

the comprehensive plan or any part and may propose amendments, extensions or additions to the comprehensive plan.

- c) Subdivision Regulations. The Planning Commission shall advise and recommend to the City Commission adoption and amendment of regulations governing the subdivision of land, following the adoption of a comprehensive plan. The Planning Commission may establish subdivision regulations for all land located in the city and may apply such regulations to land outside of but within the ETZ. The Planning Commission shall determine if a subdivision plat conforms to the provisions of the subdivision regulations. The Planning Commission may either approve the plat, or notify the applicant the plat does not conform to the requirements of the subdivision regulations.
  - i. Approval of Preliminary Plats. The Planning Commission shall determine if a preliminary plat conforms to the provisions of the Unified Development Code and comprehensive plan. See Chapter 2, Article 2.
  - ii. Approval of Final Plats. The Planning Commission shall determine if the final plat conforms to the provisions of the Unified Development Code and forward the final plat to the City Commission for acceptance of public rights-of-way and easements. See Chapter 2, Article 2.
- d) Zoning Regulations. The Planning Commission shall advise and recommend adoption and amendment of zoning regulations, following the adoption of a comprehensive plan by the City Commission. The Planning Commission shall recommend to the City Commission the nature and the number of zoning districts that it deems necessary.
- e) Evaluate Changes in Zoning Boundaries and Zoning Maps. The Planning Commission shall conduct public hearings and provide a recommendation to the City Commission on all proposed amendments to the zoning boundaries and zoning maps. This shall also include conditional uses.
- f) Conditional Uses. The Planning Commission shall conduct public hearings and provide a recommendation to the City Commission on all proposed conditional uses.
- g) Site Plans. The Planning Commission may establish zoning regulations that require the submission of site plans to assist in the planned development of a site.

#### 4. Meetings

- a) All meetings shall be conducted by the Chair of the Planning Commission, or in his/her absence, by the Vice Chair, and then by the most senior member. The Chair, and other officers, shall

be elected by a simple majority of the Planning Commissioners on an annual basis. All officers shall serve for one year, or until their successors are elected, with a maximum of two consecutive years.

- b) All meetings {other than special meetings} of the Planning Commission shall be held on the 2nd and 4th Monday of each month at 7:00 PM. When there is no official agenda, a meeting may be canceled at the discretion of the Chair. The Chair, or the Vice Chair in his/her absence, shall have the power to call any special meetings, or to change a meeting time or place following public notification. Meetings shall generally be conducted in accord with Roberts Rules of Order.

5. Rules of Voting and Conflict of Interest.

- a) The Chair may vote in all official motions or elections. The Chair shall lead all discussions, and call for all votes, give direction, focus purpose, and bring issues to closure.
- b) All official votes shall be by simple majority of a quorum. A quorum is five commissioners present at any meeting, unless specified otherwise by state law. If a tie vote occurs, the motion is lost. The Chair can entertain another motion. If the Planning Commission fails to pass a motion, then a recommendation of denial is sent to the City Commission.
- c) All votes shall be "yes" or "no" by "voice" of the members; written votes are not allowed. The Chair may require reasons for the vote from each Commissioner when the magnitude of the change requested for the plan or zone change is extensive. Abstentions from voting, as distinguished from disqualifications, shall not be allowed. Official votes shall also be written by the secretary or designee in the form of minutes; minutes shall be approved at each meeting.
- d) Any Commissioner, including the Chair may disqualify him or herself, without stating reasons, by announcing the disqualification for the record, and leaving the table while the issue is being discussed and voted on. In case of a challenge by an applicant or a member of the public or a fellow commissioner, the Chair shall rule on disqualifications. Reasons for disqualification shall be, but are not limited to, the following:
  - i. To avoid the appearance of an impropriety.
  - ii. If the planning commissioner is a property owner within the statutory distance for notification of hearing.
  - iii. If the planning commissioner is a relative, employer or employee or business partner of an applicant.
  - iii. If the planning commissioner is an agent for an applicant {in a business or legal capacity}.

- iv. If the planning commissioner serves on an appointed board with an applicant.
  - v. If a planning commissioner is a constant, long term, and close social acquaintance of an applicant.
  - vi. If the planning commissioner feels that he/she cannot render a fair and impartial judgment due to past association, hearsay, or actions of an applicant or member of a public hearing.
  - vii. If the planning commissioner is a party to ex parte contact on a particular item of business that is subject to a public hearing.
6. Conduct of Public Hearing. Please see Article 4, Section 4.103, Procedures for Public Hearings .
7. Effect of Voting
- a) Votes shall either be cast of “yes” or “no” on an issue. A tie vote presented to the City Commission shall have the same meaning as “no recommendation”.
  - b) In the case of a final plat, the vote of endorsement by the Planning Commission is not advisory, and does not require approval by the City Commission. However, the final plat shall be sent to the City Commission for approval of all dedications of land for public purposes. If the City Commission does not accept the dedications within 60 days after plat endorsement by the planning commission, the city commission shall advise the planning commission of the reasons therefore, and the plat shall not be filed.
  - c) In the case of a proposed zoning amendment to the land use map or a in the case of a proposed Conditional Use, the vote of the Planning Commission is advisory and must be presented to the City Commission in the form of either recommendation for approval or denial. Upon receiving the recommendation of the Planning Commission, the City Commission shall review and process the proposal in accordance with Article 4, Section 4.104 of this UDC.
  - d) If a protest against such amendment, supplement or change is filed in the office of the City Clerk within fourteen (14) days after the conclusion of the hearing pursuant to said publication notice and is signed by the owners of record of 20% or more of any real property proposed to be rezoned. Or by the owners of record of 20% or more of the total property within the area required to be notified by this act (excluding streets and public ways and property excluded pursuant to paragraph (2) of this subsection) the ordinance adopting such amendment shall not be passed except by at least a 3/4 vote of all of the members of the City Commission.

- e) For the purpose of determining the sufficiency of a protest petition, if the proposed rezoning was requested by the owner of the specific property subject to the rezoning or the owner of the specific property subject to the rezoning does not oppose in writing such rezoning, such property also shall be excluded when calculating the "total real property within the area required to be notified" as that phrase is used in paragraph (1) of this subsection.

### **3.101 Board of Zoning Appeals**

1. Creation. A Board of Zoning Appeal (BZA) is hereby created to administer all zoning, floodplain, subdivision appeals, variances, and other matters of land regulation as enumerated in the St. Marys Unified Development Code.
2. Membership Requirements. All members of the Board of Zoning Appeals must be age 18 years or older at the time of their initial appointment.
3. Composition of the Board.
  - a) The Board of Zoning Appeals shall be composed of five (5) members; four (4) members shall be appointed by the Mayor and one member, who is also a member of the Planning Commission, shall be appointed by a simple majority vote of the Planning Commission. One member shall reside in the extra-territorial zone.
  - b) Members shall serve for terms of three (3) years and may be re-appointed for subsequent terms.
4. Service of Members.
  - a) All members of the Board of Zoning Appeals shall serve without pay or other compensation.
  - b) Members may be removed for just cause, including conflict of interest, bias, and failure to attend scheduled meetings by a majority vote of the City Commission.
  - c) Appointments to fill unexpired terms shall be made by the Mayor, with the concurrence of the City Commission.
5. Officers and Duties.
  - a) The Chair and Vice-Chair of the Board shall be elected by the membership of the Board annually at a regular meeting in November and serve a one-year term or until a successor is elected, for a maximum of two full consecutive years.
  - b) The duties of the Chair shall be:
    - i. To preside at all meetings of the Board.
    - ii. To decide all points of procedure, unless otherwise directed by a majority vote of the Board.
    - iii. Preserve order and decorum.

- iv. Prescribe a reasonable time for the presentation of evidence, argument and comment.
- viii. Sign the decisions of the Board.
- c) The duties of the Vice-Chair shall be to assume the duties of the Chair in the Chair's absence or incapacity.
- d) The duties of the Secretary shall be to conduct all correspondence of the Board; receive and file all appeals, exceptions, or variances, papers and records; summarize and report the recommendation of the City Staff; prepare, post and mail all notices required by law, ordinance, prepare and keep calendars, dockets and minutes of Board proceedings; and generally attend to all administrative work of the Board.

6. Meetings.

- a) The Chair and in his/her absence, the Vice-Chair, and then the most senior member, shall conduct all meetings and take all votes. Meetings shall be held at a time and place designated by the Chair of the Board of Zoning Appeals.
- b) All votes shall be "Aye" or "Nay" by voice, with a taped record and written minutes kept of each session. Abstentions shall not be allowed, but members, may disqualify themselves, for cause. The secretary shall record in the minutes the vote of each member on every question, or, if the member is absent, such fact shall be indicated in the minutes.
- c) All hearings before the Board of Zoning Appeals shall be open to the public. The Board shall not hold a "closed meeting" or executive session, except as provided by Kansas Open Meetings Act.
- d) The Chair of the Board of Zoning Appeals may establish, from time to time, reasonable limitations on the length of testimony, and shall have the power to rule on objections and other points of order raised by a board member, an applicant, or member of the public hearing.
- e) Whenever there are no appeals or other business to be considered at any regular meeting, the Chair may cancel such meeting by notifying each Board member.
- f) A quorum for any meeting or hearing shall consist of three (3) members. All decisions of the Board granting an appeal, variance, or exception shall require a majority vote of a quorum.
- g) The order of business at regular meetings shall be substantially as follows below: Except as otherwise set out in these by-laws, parliamentary procedure at meetings shall be generally conducted by Robert's Rules of Order, as amended.
  - i. Roll call
  - ii. Determination of a quorum
  - iii. Approval of the minutes
  - iv. Hearing of cases

- v. Communications and miscellaneous business
- ix. Adjournment
- h) The following order of procedure shall generally be used for consideration of cases before Board:
  - i. The Chair announces the case.
  - ii. The Zoning Administrator shall present the staff report.
  - iii. The applicant or appellant shall present their case.
  - iv. Citizens will be recognized to present evidence, comment and argument in support or against the relief sought by the applicant or appellant.
  - v. Zoning Administrator evidence, comments and rebuttal to presentations by citizens.
  - vi. Applicant or appellant evidence, comments and rebuttal to presentations by citizens.
  - vii. Closing arguments by applicant or appellant.
  - viii. Closing arguments by the Zoning Administrator.
  - ix. Closing rebuttal by applicant or appellant.
  - x. The Board may question participants at any point in the hearing.
  - xi. Motion by a member or the Chair.
  - xii. Second by another member or the Chair.
  - xiii. Discussion on the motion. The facts and reasons in support of the motion shall be stated on the record during discussion on the motion.
  - xiv. Vote.
- i) The appellant or agent must appear before the Board of Zoning Appeals on the appointed time and day for the meeting or hearing. Failure to appear, unless waived by the Board of Zoning Appeals for cause, shall result in a dismissal of the appeal, and shall require re-application.
- j) The Board may adjourn or table an appeal to a date certain; such adjourned date shall be construed as a continuance of the hearing.
- k) An appeal may be withdrawn by the appellant in writing any time prior to the public hearing. Withdrawn applications for variances and exceptions may be filed again after six (6) months and shall be placed on the calendar according to the date filed.
- l) Actions of the Board of Zoning Appeals are final orders and are not sent to the City Commission for review or approval.

## 7. Powers and Responsibilities

- a) Appeals.
  - i. The Board of Zoning Appeals (BZA) is hereby authorized to hear appeals from any person or official affected by any decision of the Zoning Administrator. In exercising the power of appeals, the BZA may

reverse, amend, modify or affirm any discretionary act, requirement, decision or determination of the Zoning Administrator. To this end, the BZA shall have all of the powers of the officer from whom the appeal is taken, may attach appropriate conditions, and may issue or direct the issuance of a permit.

- ii. The appeal must be brought within 30 days of the final decision or action of the Zoning Administrator.
- iii. The appellant must file the proper forms provided by the Zoning Administrator, and if applicable, pay the appeals fee as listed in the Code of the City of St. Marys. No fee shall be refunded after a notice of appeal is filed and published.
- iv. Notice of the appeal hearing must be published once in the official city newspaper, at least 20 days prior to the hearing.
- v. When an appeal is filed, the action of the Zoning Administrator shall be stayed pending a final decision of the Board of Zoning Appeals.

b) Variances.

- i. The Board of Zoning Appeals is hereby authorized to issue variances from the specific terms of the zoning regulations provided that:
  - 1) The variance requested arises from such condition which is unique to the property in question and which is not ordinarily found in the same zone; and is not created by an action or actions of the property owner or the applicant.
  - 2) The granting of the permit for the variance will not adversely affect the rights of adjacent property owners or residents.
  - 3) The strict application of the provisions of the zoning regulations of which variance is requested will constitute unnecessary hardship upon the property owner represented in the application.
  - 4) The variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare.
  - 5) Granting the variance desired will not be opposed to the general spirit and intent of the zoning regulations.
- x. The appellant must file the proper forms provided by the Zoning Administrator, and if applicable pay the

posted fee as is listed in the Code of the City of St. Marys. No fee shall be refunded after a notice of variance is filed and published.

- ii. Notice of the variance hearing must be published once in the official city newspaper, at least 20 days prior to the hearing.

c) Exceptions.

- i. The Board of Zoning Appeals is hereby authorized to grant exceptions to the provisions of the Unified Development Code in those instances where the Board is specifically authorized to act, and only under such terms and conditions that are enumerated in the zoning regulations.
- ii. The applicant must file the proper forms provided by the Zoning Administrator, and pay the posted fee as listed in the code of the City of St. Marys. No fee shall be refunded after a notice of exception is filed and published.
- iii. Notice of the exception hearing must be published once in the official city newspaper, at least 20 days prior to the hearing.

8. Requirements for Applicants

- a) Obtain an accurate legal description of the property.
- b) Make a scale drawing of the property; usually the recorded subdivision plat or survey will be sufficient for this purpose.
- c) Complete the necessary applications on forms provided by the Zoning Administrator and pay the required fee.
- d) Make an appointment with the Zoning Administrator to review the scale drawing. If possible, bring photos that clarify the need for the variance or exception.
- e) Write a statement of purpose that explains the need for the variance or exception. Explain or clarify any extenuating circumstances that would help the Board of Zoning Appeals to understand the request.

9. Right of Appeal. Any person, official or governmental agency dissatisfied with any order, determination or action of the Board of Zoning Appeals may bring an action in the district court of the county to determine the reasonableness of any action or order. Such appeals shall be filed within 30 days of the final decision of the Board of Zoning Appeals.

10. Representatives and Agents. Nothing contained in these bylaws shall be construed as prohibiting the right of any applicant or a member of a public hearing to retain an agent to represent them before the Board of Zoning Appeals. Likewise, legal counsel may be used to represent any person having business pertaining to the Board of Zoning Appeals. All persons, and their agents or counsels, have a right to speak at the designated time,

submit written comments for the record, make objections, note exceptions, or request points of clarification {for the record} during public hearings.

### **3.102 Zoning Administrator**

1. Appointment.

The City Manager shall appoint an official known as the "Zoning Administrator" to administer the St. Marys Unified Development Code. The Zoning Administrator may use other City employees to assist in the administration of the UDC, such use to be approved by the City Manager and with the concurrence of Department Heads.

2. Powers and Duties of the Zoning Administrator. The powers and duties of the Zoning Administrator shall include, but not be limited to the following:

- a) Letter of zoning compliance. To issue or deny a certificate of zoning compliance, which indicates that the use and physical development of the site is in conformity with the UDC.
- b) Process all applications for changes in zoning boundaries, conditional uses, site plans, and subdivision plats, including the collection of any fees.
- c) Process all applications for the Board of Zoning Appeals.
- d) To make and keep all records required by state law or necessary and appropriate for the administration of the UDC.
- e) Maintain the official zoning map.
- f) Review lot splits.
- g) Create such forms and applications as are necessary for the administration of the UDC. The information requirements specified on forms and applications for the administration of the UDC thus created shall not exceed, and shall be consistent with, the information requirement specified in the UDC.
- h) The authorization to grant administrative zoning variances for waivers, temporary uses, cases of necessity, minor errors and/or honest mistakes without recourse to the Planning Commission or the Board of Zoning Appeals. All administrative zoning variances granted under this authority shall be documented, with a copy given to the person requesting the variance. The variances authorized under iii. and iv. below shall not be interpreted as granting a special benefit to property owners as a matter of mere convenience. These two provisions are intended to prevent unreasonable hardships created by strict enforcement of the UDC in unique situations. The Zoning Administrator's administrative zoning variance authority includes:
  - i. Waiver of the sign requirements in Article 19.
  - ii. The granting of a temporary sign permit for a maximum of 30 days.

- iii. Waiver of any provision of the UDC related to the use of property on a temporary basis, limited to a prudent and reasonable time, when property owners have been impacted by natural or man-created disasters or a health emergency. If the period of the waiver extends beyond 60 days, the Zoning Administrator shall seek approval from the City Commission.
  - iv. The waiver of any provision of the UDC related to the use of property during times of construction, reconstruction, or adaptation waivers for such items as temporary living quarters for construction personnel, offices, storage buildings, machinery and equipment, stocked pile materials, sanitary facilities and portable concrete and asphalt mixing plants are included within this waiver authority. The waiver variance under this provision shall be for a finite period of time, up to a year in duration, as is reasonable based on the construction schedule. If the period extends past a year in duration, the Zoning Administrator shall seek approval from the City Commission.
  - v. The issuance of a permanent setback variance, only in the case of an existing use, when it is discovered that a principal permitted use, or an accessory use, does not conform to established building setbacks. The setback variance may encroach into a yard or setback line to a maximum of 5 percent or 5 feet, whichever is greater. A request for a setback variance for greater than five (5) percent or five (5) feet shall be referred to the Board of Zoning Appeals for the issuance of a permanent setback variance for the extension of parking areas into any yard or setback line, provided that a clear view for traffic is maintained.
- i) Interpret the official zoning map and provisions of the UDC, and offer written opinions on their meaning and applicability, and to make findings of fact, and, with the concurrence of the City Attorney, conclusions of law regarding determinations of vested rights.
  - j) Use an averaging method to establish any yard or setback in established areas to prevent excessive offsets between new and old structures.
  - k) Authorized to grant a waiver, grant temporary uses, and issue a "Permit to Encroach" in cases of necessity, minor error and/or "honest mistake" without recourse to the Planning Commission or Board of Zoning Appeals.

### 3.103 Building Permit

1. Building Permit Required. It shall be unlawful to commence the construction or the excavation for the construction of any building or structure, or the development of any site, including accessory structures or uses, or to commence the moving or alteration as defined in the city building code of any building, including accessory buildings within the City of St. Marys until the Building official/Zoning Administrator has issued a building permit for such work.
2. It shall be unlawful to commence the construction or the excavation for the construction of any building or structure, or the development of any site, including accessory structures or uses, or to commence the moving onto any site in the extra-territorial zone any building until a letter of zoning compliance is obtained from the Zoning Administrator.  

Exception: Upon written authorization of the Board of Zoning Appeals as provided in Section 3.101, no such building permit shall be issued for any building where said construction, moving, alteration, or use thereof would be in violation of any provision of this Unified Development Code.
3. All applications for a building permit shall be accompanied with a site layout or plot plan drawn to scale, showing the actual shape and dimensions of the lot to be built upon, the exact size and location of the lot, existing buildings or structures, if any, and the size and location of the building or structure to be constructed, altered, or moved. The applicant shall state the existing and intended use of each building or part of building.
4. When requested by the Zoning Administrator, stakes on property corners, and at the corners of the proposed building shall be put in. Stakes placed on property lines or corners shall be marked "property line or corner". Stakes placed on building corners shall be marked "building corner".
5. Site Plan Approval. Before a building permit is issued for uses classified as a "conditional use" or specified for an "administrative site plan review", the applicant shall be required to submit a site plan in compliance with the requirements set forth in Article 8.