

**WILLARD CITY
ORDINANCE NO. 2021-6**

**AN ORDINANCE REPEALING CHAPTER 12-101-2, BOARD OF ADJUSTMENT
OF THE WILLARD CITY MUNICIPAL CODE**

WHEREAS, Chapter 12-101-2 of the Willard City Municipal Code allows for a Board of Adjustment (“hereinafter “Board”), to hear and decide appeals where it is alleged that there is error in any order, requirement, decision or determination made by the administrative official in the enforcement of any zoning and/or land use ordinance adopted pursuant thereto. To hear and decide special exceptions to the terms of zoning and land use ordinances upon which such Board is required to pass under the provisions of the zoning and land use ordinances. To authorize upon appeal such variance from the terms of zoning and land use ordinances as will not be contrary to the public interest, where owing to special conditions a literal enforcement of the provisions of any such ordinance will result in unnecessary hardship provided, that the spirit of the ordinance shall be observed and substantial justice done; and

WHEREAS, the Willard City Council desires to make Chapter 12-101-2 meet the City’s objectives of enacting clear and consistent decisions and determinations; and

WHEREAS, the City Council of Willard City does hereby determine that it is in the best interest of the health, safety, and welfare of the citizens of Willard City to repeal Chapter 12-101-2, and reenact Chapter 12-101-2 of the Willard City Municipal Code as designated an Appeal Authority in the form of a Hearing Officer to hear and decide requests for variances from the terms of land use ordinances; appeals from land use decisions applying land use ordinances; and appeals from fees charged by Willard City in accordance with Utah Code Annotated §10-9a-510.

NOW, THEREFORE, BE IT ORDAINED by the City Council of Willard City as follows:

Section 1. Repealer. Any provision of the Willard City Municipal Code found to be in conflict with this Ordinance is hereby repealed. Specifically, Chapter 12-101-2 of the Willard City Municipal Code is hereby repealed in its entirety as follows:

~~CHAPTER 12-101. PLANNING COMMISSION AND BOARD OF ADJUSTMENTS~~

~~12-101-2 BOARD OF ADJUSTMENTS~~

- ~~A. Board, Number of Members, Appointment, Term and Removal, Vacancies. The board of adjustment shall consist of five members, each to be appointed by the legislative body for the term of five years provided that the term of one member shall expire each year. Any member may be removed for cause by the appointing authority upon written charges and after public hearing, if such public hearing is requested. Vacancies shall be filled for the unexpired term of any member whose term becomes vacant. One member, but not more than one, of the planning commission shall be a member of the board of adjustment.~~
- ~~B. Duties And Powers Of Board. The board of adjustment shall have the following powers:~~
- ~~1. To hear and decide appeals where it is alleged that there is error in any order, requirement, decision or determination made by the administrative official in the enforcement of this chapter or of any ordinance adopted pursuant thereto.~~
 - ~~2. To hear and decide special exceptions to the terms of this ordinance upon which such board is required to pass under the provisions of this ordinance.~~

~~3. To authorize upon appeal such variance from the terms of this ordinance as will not be contrary to the public interest, where owing to special conditions a literal enforcement of the provisions of the ordinance will result in unnecessary hardship; provided, that the spirit of this ordinance shall be observed and substantial justice done. Before any variance may be authorized, however, it shall be shown that:~~

- ~~a. The variance will not substantially adversely affect the comprehensive plan of zoning and that adherence to the strict letter of this ordinance will cause difficulties and hardships, the imposition of which upon the petitioner is unnecessary in order to carry out the general purpose of the zoning plan.~~
- ~~b. Special circumstances are attached to the property covered by the application which do not generally apply to other property in the same district.~~
- ~~c. That because of said special circumstances, property covered by application is deprived of privileges possessed by other properties in the same district; and that the granting of the variance is essential to the enjoyment of a substantial property right that is possessed by other property in the same district.~~

~~C. Action To Be Taken. Approval or disapproval, rejection, or modified approval of an application shall be based upon findings which shall be made a part of the official record.~~

~~D. Vote Necessary For Reversal. The concurring vote of three members of the board shall be necessary to reverse any order, requirement, or determination of any such administrative official; or to decide in favor of the appellant on any matter on which it is required to pass under this ordinance or to effect any variation in the provisions of the ordinance.~~

~~E. Decision On Appeal. In exercising the above mentioned powers such board may in conformity with the provisions of this ordinance 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.~~

~~F. Rules. The board shall adopt rules for the regulation of its procedure and the conduct of its duties not inconsistent with the provisions of this ordinance or of the State law. Such rules, to become effective, shall first be approved by the local governing body.~~

~~G. Judicial Review Of Board's Decision Time Limitation. The local jurisdiction or any person aggrieved by any decision of the board of adjustment may have and maintain a plenary action for relief therefrom in any court of competent jurisdiction; provided, petition for such relief is presented to the court within thirty days after the filing of such decision in the office of the board.~~

Section 1. Reenactment. Chapter 12-101-2 will be reenacted as Chapter 12-101-2 of the Willard City Municipal Code as Appeal Authority as Hearing Officer.

APPEAL AUTHORITY AS HEARING OFFICER

12-101-2. HEARING OFFICER

A. Established

In accordance with the Utah Code Annotated §10-9a-701 *et seq.*, and to carry out the provisions of Utah law relating to planning and zoning, Willard City hereby establishes an appeal authority to hear and decide requests for variances from the terms of land use ordinances; appeals from land use decisions applying land use ordinances; and appeals from a fee charged by Willard City under Utah Code Annotated §10-9a-510. The appeal authority shall be in the form of an appointed Appeals Hearing Officer

(hereinafter "Hearing Officer"). The Hearing Officer shall be appointed by the Mayor with the approval of the City Council. Any previously ordained or appointed Board of Adjustments is dissolved effective upon passage of this ordinance.

B. Term

The Hearing Officer shall be appointed for a period of three (3) years, may be removed by a majority vote of the city council at any time, and may serve until a replacement is appointed. A vacancy shall be filled in the same manner as the original appointment for the unexpired term.

C. Organization

The Hearing Officer may adopt such rules for its own proceedings as are deemed necessary. The Hearing Officer shall keep minutes of all proceedings, showing the decision of the Hearing Officer upon each question, and shall keep records of its examinations and other official actions, all of which shall immediately be filed in the office of the City Recorder, and shall be a public record. Decisions of the Hearing Officer become effective at the meeting in which the decision is made, unless a different time is designated at the time the decision is made.

D. Powers and Duties

The Hearing Officer shall have such powers and duties as provided by Utah Code Annotated §10-9a-702 *et seq.*

E. Appealing Land Use Authority's Decision

An applicant, a board or officer of the City, or any person adversely affected by the land use authority's decision applying a land use ordinance may, within the time period provided for in this section, appeal that decision to the Hearing Officer by alleging there is an error in any order, requirement, decision, or determination made by the land use authority in the decision applying the land use ordinance. When an appeal is taken from a decision of the land use authority, the City Recorder shall immediately transmit to the Hearing Officer all papers, if any, constituting the record upon which the action appealed from was taken.

(1) Time to Appeal and Filing Fee: Any appeal, pursuant to this section, must be in writing, on forms provided by the City, with the City Recorder within ten (10) calendar days of the issuance of the written decision applying the land use ordinance. Upon the filing of any appeal with the City Recorder, the appellant shall pay to the City Recorder, the fee proscribed in the most recently adopted prevailing fee schedule of the City. The City Recorder shall not transmit papers or records to the Hearing Officer and the Hearing Officer shall not consider any appeal unless and until such fee has been paid.

(2) Time for Hearing Appeal: The Hearing Officer should hear the appeal within fifteen (15) to thirty (30) days of the date the appeal was filed.

(3) Written Statement Setting Forth Theories of Relief Requested: The appellant shall deliver to the Hearing Officer and all other participants, five (5) business days prior to the hearing, a written statement setting forth each and every theory of relief the appellant intends to raise at the hearing, along with a brief statement of facts in support thereof.

(4) Conditions Precedent to Judicial Review: No person, board, or officer of the City may seek judicial review of any decision applying the land use ordinance until after challenging the land use authority's decision in accordance with this part. No theory or relief may be raised in the District Court unless it was timely and specifically presented to the Hearing Officer.

(5) Standard of Review and Burden of Proof on Appeal: The Hearing Officer shall, on appeal, presume that the decision applying the land use ordinance is valid and determine only whether or not the decision is arbitrary, capricious, or illegal. The appellant has the burden of proof on appeal.

(6) Due Process Rights: An appeal filed in accordance with this section stays all proceedings in the appeal activity, unless the Hearing Officer from whom the appeal is taken certifies that by reason of facts stated in the certification that the stay would in their 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 Hearing Officer in person or by the City Attorney.

(7) Conditional Use Permit Appeals: The City Council shall continue to hear and decide appeals from the planning commission decisions regarding conditional use permits.

(8) Direct Appeal to the District Court: Notwithstanding the foregoing, decisions of the City Council relative to adopting or amending the general plan or any other land use ordinance may only be appealed directly to the District Court.

(9) Decision of Appeal: In exercising the above-mentioned powers and authority, the Hearing Officer may affirm or reverse, wholly or in part, or may modify the order, requirement, decision or determination of a land use authority.

G. 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 they own, lease, or in which they hold some other beneficial interest may apply to the Hearing Officer for a variance from the terms of the ordinance.

(1) The Hearing Officer may grant a variance only if:

- a. Literal enforcement of the ordinance 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;
- b. There are special circumstances attached to the property that do not generally apply to other properties in the same district;
- 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) In determining whether or not enforcement of the land use ordinance would cause an unreasonable hardship, the Hearing Officer may not find an unreasonable hardship unless the alleged hardship:

- (i) Is located on or associated with the property for which the variance is sought; and
- (ii) Comes from circumstances peculiar to the property, not from conditions that are general to the neighborhood.

(3) In determining whether or not enforcement of the land use ordinance would cause unreasonable hardship under this section, the Hearing Officer may not find an unreasonable hardship if the hardship is self-imposed or economic.

(4) In determining whether or not there are special circumstances attached to the property under this section, the Hearing Officer may find that special circumstances exist only if the special circumstances:

(i) relate to the hardship complained of; and

(ii) deprives the property of privileges granted to other properties in the same zone.

(5) The applicant shall bear the burden of proving that all of the conditions justifying a variance have been met.

(6) Variances run with the land.

(7) The Hearings Officer may not grant a use variance.

(8) In granting a variance, the Hearing Officer may impose additional requirements on the applicant that will:

(i) Mitigate any harmful effects of the variance; or

(ii) Serve the purpose of the standard or requirement that is waived or modified.

Section 2. Conflict. If any portion of this code is found to be in conflict with any other provision of any zoning, building, fire, safety, or health ordinance of the City code, the provision which establishes the higher standard shall prevail.

Section 3. Severability. If any section, subsection, sentence, clause, or phrase of this code or its application to any person or circumstance is held invalid by the decision of any court of competent jurisdiction, the remainder of this code, or the application of the provision to other persons or circumstances is in effect and shall remain in full force and effect.

Section 4. Effective Date. This ordinance shall take effect immediately upon posting and publication in the manner as required by law.

PASSED AND ADOPTED by the City Council on this 8th day of July 2021.


KENNETH BRAEGGER, MAYOR

ATTEST:


MICHELLE VEST SNARR,
CITY RECORDER



CERTIFICATION OF PASSAGE AND PUBLICATION OR POSTING

According to the provision of U.C.A. §10-3-713, 1953 as amended, I, the City Recorder of the City of Willard, Utah, hereby certify that Ordinance No. 2021-6 was duly passed and published on the Utah Public Notice Website the 9th day of July, 2021, and posted on the Willard City Website.

Michelle J. Smith

DATE: July 9, 2021

City Recorder

