

The Planning Commission

Each city and town is required to pass an ordinance establishing a planning commission.¹ The ordinance must define the number and terms of the members, and alternate members if any,² and the mode of appointment. The ordinance must also contain the procedures for filling vacancies and removal from office. This has been an overlooked provision of most ordinances and the source of some contention and even law suits. The best practice is to make the section on removal from office fairly specific and have definite standards of conduct and attendance for commission members. Without these specifics it may be difficult to remove members from a commission prior to the expiration of their term in office.

The ordinance should also detail the authority of the planning commission. Not all planning commissions in Utah will have the same power and authority.

Every planning commission must have some minimal authority under state law. This includes making a recommendation to the city or town council for adoption and amendment of the general plan and making recommendations to the city or town council on the adoption or amendment of land use ordinances, zoning maps, or official maps. The planning commission must also be involved in making recommendations on proposed subdivision plats and recommending an annexation policy for the city or town.

No other powers or duties are required to be given to the planning commission by the city or town, and the planning commission does not have any other inherent powers. Many commissions try to involve themselves in matters such as business licensing, animal regulations, and nuisance enforcement. This is appropriate only if the city or town ordinances delegate these responsibilities to them.

The planning commission must operate within the constraints of state law. The land use ordinances recommended to the city or town council by the planning commission must include an appropriate delegation of power to at least one designated “land use authority” to act on a land use application, an appropriate delegation of power to at least one “appeal authority” to hear and act on appeals from a decision of the land use authority, and lay out the application process that the city will use to consider any land use applications.³

The planning commission may be designated in the city or town land use ordinances as the “land use authority” in the city for making land use decisions, or they may be

¹ Utah Code 10-9a-301.

² This implies that someone other than the mayor (or city manager in the city manager optional form of government) could be given the right to appoint planning commission members by the ordinance. I do not believe this is a valid interpretation. Mayors, or city managers, clearly have the statutory authority to appoint, with the advice and consent of councils, persons to the city commissions including the planning commission.² To be consistent with the other provisions of the Utah Municipal Code, the term “mode of appointment” would have to be limited to things other than who has the power of appointment.

³ Utah Code 10-9a-302.

designated as the “appeal authority” for appeals from land use decisions, but the planning commission cannot be the deciding authority and the appeal authority on the same issues. For example if the planning commission is given, by the city or town ordinance, the authority to approve site plans then some other person or body must be given the authority to appeal the decisions of the planning commission on site plans.

When a planning commission is delegated by local ordinance the role of approving or issuing permits, it must follow and implement the ordinances and state law. It is then acting in an administrative role. Administrative functions are usually not discretionary. For example, Utah law specifically provides that a land use applicant is entitled to approval of his or her application if the application conforms to the local law and if all fees have been paid.⁴ The provisions regarding subdivisions in Utah law specifically provide that if the city or town subdivision ordinances, and or state code requirements are complied with, the subdivision must be approved by the city or town.⁵

The ordinance setting up the planning commission should also establish the details of how the commission operates as well as rules of procedure. The ordinance may also fix per diem compensation for the members of the planning commission, based on necessary and reasonable expenses and on meetings actually attended. This section of state law should be read to say that planning commissioners may be reimbursed for their services but not paid employment.

Some confusion has arisen over what power a planning commission, or individual planning commissioner, really has. The answer is not much. Planning commissions are not policy making bodies. The requirement of state law is that the planning commission is to be involved in making recommendations to the city or town legislative body regarding certain land use ordinances. If the city or town council does not accept the recommendations, there is nothing the planning commission can do. The state code specifically provides that the city or town council can either adopt a recommended ordinance, reject it, or revise it.⁶ This is not to say that planning commissions are not important. Politicians, like members of city councils and mayors, have a great need for well thought out and studied recommendations in the area of planning and zoning. Planning commissioners who provide this service are invaluable to a community. Planning commissioners who see their roles as representing special interests or specific neighborhoods are not as helpful in the planning process and may actually hinder good planning.

⁴ Utah Code 10-9a-509.

⁵ Utah Code 10-9a-509.

⁶ Utah Code 10-9a-404(3); 10-9a-502; 10-9a-602.