
CHAPTER 14 – OFFICERS, BOARDS AND COMMISSIONS

SECTION 14.0 TOWN COUNCIL:

Pursuant to *Arizona Revised Statutes (A.R.S.)* and this Ordinance, the powers and duties of the Mayor and Town Council (*“the Council”*) shall include but not be limited to the following:

- A. To hear, review, approve, approve with conditions, or deny zoning applications and *Special Use* applications after recommendation by the Planning Commission (*“the Commission”*) in accordance with the provisions of this *Ordinance*.
- B. To hear, review and adopt amendments to the *Zoning Map* after recommendation by the Commission in accordance with the provisions of this *Ordinance*.
- C. To hear, review and adopt amendments to the text of this *Ordinance* after recommendation by the Commission, in accordance with the provisions of this *Ordinance*.
- D. To initiate, adopt, and amend the *General Plan*, including the text, maps and exhibits, and all elements of the *General Plan*, after recommendation by the Commission in accordance with the provisions of this *Ordinance*.
- E. To take such action not expressly delegated exclusively to the Zoning Administrator, the Commission, or the Board of Adjustment (*“the Board”*) as the Council may deem desirable and necessary to implement the provisions of this *Ordinance* and the *General Plan*.

SECTION 14.1 PLANNING COMMISSION:

- A. Establishment: There is hereby established, pursuant to *A.R.S.*, a Planning Commission, to be known as the Town of Cave Creek Planning Commission.
- B. Powers: The Commission is the planning agency for the Town and has the powers necessary to enable it to fulfill its planning function, in accordance with the *Arizona Revised Statutes* and this Ordinance. The Commission shall advise the Council regarding applications for amendments to the *General Plan*, *Area Specific Plans* and this *Ordinance*. In no event is the Commission authorized to render a final decision approving, denying, or conditionally approving a change in this *Ordinance* or the *General Plan*.
- C. Duties: In addition to any authority otherwise imposed by law, the

Commission shall have the following powers and duties, to be exercised in accordance with the terms of this Ordinance:

1. To hold public hearings when necessary or when required by law.
 2. To initiate, hear, review, and make recommendations to the Council regarding applications for amendments to the *General Plan* or *Area Specific Plans*. On an annual basis make recommendation(s) to the Mayor and Council concerning the *General Plan* as well as plans for the development of any land outside the Town's border, which in the opinion of the Commission, is substantially related to the planning of the Town.
 3. To make recommendations to the Council on all matters concerning or relating to the creation of *Zoning Ordinances*, the boundaries thereof, the appropriate regulations to be enforced therein, and amendments of this *Ordinance* and *Zoning Map* and to undertake any other activities usually associated therewith and commonly known as "planning and zoning".
 4. To hear, review and make recommendations to the Council on *Special Use Permits* and any other permit or review process as provided in this *Ordinance* or the *Subdivision Ordinance*.
 5. To confer and advise with other town, county, regional, state or federal planning agencies and commissions.
- D. Membership: The Commission shall consist of seven (7) members, all of whom shall be residents of the Town. The members of the Commission shall be appointed by, and serve at the pleasure of, the Council. The members of the Commission shall serve without compensation.
- E. Term of Office: The term of office of the members of the Commission shall be three years (3 yrs.), with the terms of members so staggered that the terms of no more than three (3) members shall expire in any one-year (1 yr.). In the event of the death, resignation, or removal of a member of the Commission, the Council shall appoint a resident to fill the vacancy for the un-expired term.
- F. Organization:
1. Officers: The Commission shall elect a chairperson and vice-chairperson from among its own members at its first meeting in January of each year. The chairperson shall preside at all meetings. The vice-chairperson shall perform the duties of the chairperson in the

latter's absence or disability. The Clerk of the Commission shall be a member of the Town staff appointed by the Town Manager, and is not a voting member of the Commission.

2. Meetings: Meetings of the Commission shall be open to the public. Public input shall be permitted on all matters before the Commission. The minutes of the proceedings, showing the vote of each member and records of its examinations and other official actions, shall be kept and filed in the office of the Town Clerk as a public record.
3. Quorum: Four (4) members of the Commission shall constitute a quorum for the transaction of business. No matter may be considered by the Commission unless there are four (4) or more members present who are eligible/qualified to vote on the matter. The affirmative vote of at least a majority of the quorum present and voting shall be required to pass a motion. If a member has been present for the entire presentation of an issue, that member may abstain from voting only if the member has a conflict of interest. If a member has a conflict of interest he/she shall declare said conflict of interest prior to the presentation and shall abstain from all discussion and deliberation on the matter in question.
4. Rules and Regulations: The Commission may make and publish by-laws to govern its proceedings and to provide for its meetings subject to review by the Town Attorney and approval by the Council.

SECTION 14.2 BOARD of ADJUSTMENT:

- A. Establishment: There is hereby established a Board of Adjustment (*"the Board"*) to be known as the Cave Creek Board of Adjustment.
- B. Duties: In addition to any authority otherwise granted to the Board by *A.R.S.*, the Board shall have the following powers and duties:

To hear and decide appeals in which it is alleged that there is an error in an order, requirement or decision made by the Zoning Administrator in the enforcement of this *Ordinance*. The Board may reverse, affirm, or modify, wholly or partly, any order, requirement or decision of the Zoning Administrator properly appealed to the Board, and make such order, requirement, decision or determination as is necessary.

1. To hear and decide appeals for Variances from the terms of this *Ordinance*, only if, because of special circumstances applicable to the property, including its size, shape, topography, location, or

surroundings, the strict application of the *Zoning Ordinance* will deprive such property of privileges enjoyed by other property of the same classification in the same zoning district. Any variance granted is subject to such conditions as will assure that:

- a. The adjustment authorized shall not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which such property is located.
 - b. The granting of the adjustment will not be materially detrimental to persons residing or working in the vicinity, to adjacent property, or to the neighborhood or the public welfare.
2. Pursuant to *A.R.S.*, the Board may not:
- a. Make any changes in the uses permitted in any zoning classification or zoning district, or make any changes in the terms of the *Zoning Ordinance*, provided the restrictions in this paragraph shall not affect the authority to grant variances.
 - b. Grant a Variance if the special circumstances applicable to the property are self-imposed by the property owner
- C. **Membership:** The Board shall consist of five (5) members who shall be residents of the Town of Cave Creek. The members of the Board shall be appointed by, and serve at the pleasure of the Council. The members of the Board shall serve without compensation.
- D. **Term of Office:** The term of office of the members of the Board shall be three years (3 yrs.), with the terms of members so staggered that the terms of no more than two (2) members shall expire in any one-year (1 yr.). In the event of the death, resignation, or removal of a Board member, the Council shall appoint a Town resident to fill the vacancy for the unexpired term.
- E. **Organization of Board of Adjustment:**
1. **Officers:** The Board shall elect a chairperson and a vice-chairperson from among its own members at its first meeting held in each calendar year. The chairperson shall preside at all meetings, administer oaths and take evidence. The vice-chairperson shall perform the duties of the chairperson in the latter's absence or disability.

The Clerk of the Board shall be a member of the Town staff appointed

by the Town Manager, and is not a voting member of the Board.

2. Meetings: Meetings of the Board of Adjustment will be called as needed by the Chair. Meetings of the Board shall be open to the public and public input shall be taken at the discretion of the chairman. The minutes of the proceedings, showing the votes of each member and records of it examinations and other official actions, shall be kept and filed in the office of the Town Clerk as a public record.
 3. Quorum: Three (3) members of the Board shall constitute a quorum for the transaction of business. No matter may be considered by the Board unless there are three (3) or more members present who are eligible/qualified to vote on the matter. The affirmative vote of at least the majority of the quorum present and voting shall be required to pass a motion. If a member has been present for the entire presentation of an issue, that member may abstain from voting only if the member has a conflict of interest. If a member has a conflict of interest he/she shall declare said conflict of interest prior to the presentation and shall abstain from all discussion and deliberation on the matter in question.
 4. Rules and Regulations: The Board shall adopt and publish rules and procedures necessary for the conduct of its business, subject to review by the Town Attorney and approval by the Town Council.
- F. Stay of Proceedings: An appeal to the Board of Adjustment stays all proceedings in the matter appealed from, unless the Zoning Administrator certifies to the Board that, in the Zoning Administrator's opinion, based on the facts stated, a stay would cause imminent peril to life or property. Upon such certification, proceedings shall not be stayed except by an order granted by the Board or by a Court of Record on application and notice to the Zoning Administrator. Proceedings shall not be stayed if the appeal requests relief, which has previously been denied by the Board except pursuant to a special action in Superior Court as provided for in state law.

SECTION 14.3 ZONING ADMINISTRATOR:

- A. Establishment: Pursuant to *A.R.S.*, the staff position of Zoning Administrator is hereby established for the general and specific administration of this Ordinance. The Planning Director shall serve as the Zoning Administrator. During any period that the position of Zoning Administrator is vacant, the Town Manager or his/her designated representative shall perform the duties of the Zoning Administrator.

- B. Powers: The Zoning Administrator, acting under the direction of the Town Manager, shall have all of the powers of a Zoning Administrator under A.R.S. and this *Ordinance*.
- C. Duties of the Zoning Administrator: The Zoning Administrator shall have the following duties:
1. To establish rules, procedures and forms to provide for processing of applications or requests for action under the provisions of this *Ordinance*.
 2. To perform all administrative actions required by this *Ordinance*, including giving notice; scheduling hearings; preparing reports; receiving, processing and deciding applications for a Disability Accommodation; receiving and processing appeals; the acceptance and accounting of fees; and the rejection or approval of site plans as provided by this *Ordinance*.
 3. To provide advice and recommendations to the Commission, the Board, and the Council with respect to applications and requests for approvals and permits required by this *Ordinance*.
 4. To assure that any development or use proceed only in accordance with the terms, conditions, or requirements imposed by the Town's Board(s), Commission or Council.
 5. To direct such inspections, observations and analysis of any and all erection, construction, reconstruction, alteration, repair or use of buildings, structures or land within the Town as is necessary to fulfill the purposes and procedures set forth in this *Ordinance*. No building shall be occupied until such time as the Zoning Administrator has issued a letter of compliance with this *Ordinance*.
 6. To take such action as is necessary for the enforcement of this *Ordinance* including but not limited to the stipulations or conditions of *Zoning Map Amendments, Special Use Permits, Special Event Permits, Abandonment's, Variances, Site Plan Reviews, Lot Splits and Subdivision Plats*.
 7. To interpret the *Zoning Ordinance* to the public, Town departments, and other branches of government, subject to the supervision of the Town Manager and general or specific policies established by the Council.

8. To undertake preliminary discussions with, and provide non-legal advice to, applicants requesting zoning adjustment action.
9. To determine the location of any zoning district boundary shown on the *Zoning Map* adopted as part of this *Ordinance* when such location is in dispute.
10. To review and render a decision on applications for a Disability Accommodation Permit to establish a community residence under the following circumstances in accord with the standards promulgated below:
 - a. When a community residence is proposed to be located within 660 linear feet or seven lots, whichever is greater, of an existing community residence, a Disability Accommodation Permit shall be approved only when it is found by a preponderance of the evidence that the applicant has demonstrated that:
 - (1) The proposed community residence will not interfere with the normalization and community integration of the residents of any existing community residence and that the presence of other community residences will not interfere with the normalization and community integration of the residents of the proposed community residence, and
 - (2) The proposed community residence in combination with any existing community residences will not alter the residential character of the surrounding neighborhood by creating an institutional atmosphere or by creating or intensifying an institutional atmosphere or *de facto* social service district by concentrating or clustering community residences on a block face or in a neighborhood.
 - b. When neither the State of Arizona nor the Arizona Recovery Housing Association issues or requires a license or certification for the proposed community residence and the proposed community residence is not an Oxford House operating under the Oxford House Charter, a Disability Accommodation Permit shall be approved only when it is found by a preponderance of the evidence that the applicant has demonstrated that:

- (1) The proposed community residence will be operated in a manner effectively similar to that of a state licensed or certified community residence;
 - (2) Staff will be adequately trained in accord with standards typically required by state licensing or certification for a community residence;
 - (3) The community residence will emulate a biological family and be operated to achieve normalization and community integration; and
 - (4) The rules and practices governing how the community residence is operated will actually protect residents from abuse, exploitation, fraud, theft, insufficient support, use of illegal drugs or alcohol, and misuse of prescription medications.
- c. When a community residence is proposed to be occupied by more than ten occupants, a Disability Accommodation Permit shall be approved only when it is found by a preponderance of the evidence that the applicant has demonstrated that:
- (1) The number of residents sought is needed for the economic and/or therapeutic viability of the community residence;
 - (2) The proposed community residence will emulate a biological family and operate as a functional family rather than as a boarding or rooming house, nursing home, short term rental, continuing care facility, motel, hotel, treatment center, rehabilitation center, institutional use, or other nonresidential use;
 - (3) The primary function of the proposed community residence is residential where any medical treatment is merely incidental to the residential use of the property; and
 - (4) The requested number of residents in the proposed community residence will not interfere with the normalization and community integration of the occupants of any existing community residence and the use of nondisabled neighbors as role models.

D. Limitation on Power of the Zoning Administrator:

1. The Zoning Administrator may not make any changes in the uses permitted in any zoning classification or zone or make any changes in the terms of the *Zoning Ordinance*.

E. Appeals:

1. Any person aggrieved or affected by a decision of the Zoning Administrator may appeal to the Board of Adjustment, by filing a written request with the Zoning Administrator. Upon receiving a written appeal, the Zoning Administrator shall transmit to the Board all records related to the appeal.
2. An appeal under this section must be filed within ten (10) working days from the date the Zoning Administrator has notified the applicant, in writing, via certified mail return receipt requested of his/her decision. If no appeal is filed within the time specified the decision of the Zoning Administrator shall be final.

- F. Submittal Requirements:** All requests for action by the Commission, or Board, shall be filed with the Zoning Administrator. All requests shall be in a form required by the Zoning Administrator and in a manner provided in this *Ordinance* or in rules or regulations approved by the Council.