

Article 5.1 Planning Administration

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5.101 Purpose

The purpose of this article is to identify those bodies, administrators, and officials with responsibilities under the Gilbert Land Development Code. Subsequent articles of Division 5: Administration, provide detailed information regarding procedures, applications, and permits, including Zoning and General Plan text and map amendments, fees, and enforcement. When carrying out their assigned duties and responsibilities, all bodies, administrators, and officials shall interpret and apply the provisions of the Zoning Code as minimum requirements adopted for the promotion of the General Plan to lessen congestion in the streets; to secure safety from fire, panic, and other dangers; to promote the public health, comfort, convenience, safety, and general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to facilitate the adequate provision of transportation, water, sewers, schools, parks, and other public requirements; to promote environmental quality and the public interest; and to preserve property values.

5.102 Town Council

The Town Council has the following powers and duties under the Zoning Code:

- A. Consider and adopt, reject or modify amendments to the General Plan pursuant to the provisions of Article 5.8: Amendments to the General Plan Text or Map;
- B. Consider and adopt, reject or modify annexation of property and Maricopa County rights-of-way and roadways pursuant to the provisions of Article 5.11: Annexations;

- C. Consider and adopt, reject or modify amendments to the text of the Zoning Code pursuant to the provisions of Article 5.7: Amendments to Zoning Code Text, a Zoning Ordinance or the Official Zoning Map;
- D. Consider and adopt, reject or modify amendments to the Official Zoning Map, pursuant to the provisions of Article 5.7: Amendments to Zoning Code Text, a Zoning Ordinance or the Official Zoning Map;
- E. Hear and decide appeals from decisions of the Planning Commission on use permits, pursuant to the provisions of Article 5.4: Use Permits;
- F. Hear and decide appeals from decisions of the Planning Commission on preliminary subdivision plats, pursuant to the provisions of Chapter III: Subdivision Regulations;
- G. Hear and decide appeals from decisions of the Planning Commission on separation fence requirements, pursuant to Section 4.109G: Modification of Separation Fence Requirements;
- H. Consider and approve final subdivision plats and amendments thereto, pursuant to the provisions of Chapter III: Subdivision Regulations;
- I. Hear and decide appeals from decisions of the Design Review Board or Redevelopment Commission, pursuant to the provisions of Article 5.6: Design Review;
- J. Exercise appeal authority as authorized by the Zoning Code;
- K. Appoint members of the Planning Commission, Redevelopment Commission and Design Review Board;
- L. Establish, by resolution, a schedule of fees and charges for the various applications and services provided pursuant to the Zoning Code;
- M. Adopt Design Guidelines for the design review process;
- N. Consider and approve plans designated as protected development right plans, pursuant to the provisions of Article 5.9: Protected Development Right Plan;
- O. Revoke protected development right plans pursuant to the provisions of Article 5.9: Protected Development Right Plan; and
- P. Hear and decide Requests for Reconsideration pursuant to the provisions of Article 5.10: Appeals of Dedications, Exactions and Zoning Regulations and Reconsideration of Certain Decisions.

5.103 Planning Commission

The Planning Commission (the "Commission") is established pursuant to Chapter 1, Article IV, Division 6, of the Gilbert Municipal Code and the requirements of Arizona Revised Statutes.

A. ***Creation, Membership, and Terms of Office.***

1. The Commission is composed of 7 regular members and 2 alternate members appointed by the Town Council. Members of the Commission shall reside in the Town. A change of residence from the Town of any member shall create a vacancy as of the date of such change of residence.
2. The term of each regular member of the Commission shall be for a period of 4 years or until his successor assumes office. Members shall serve staggered terms whereby no more than 4 members' terms expire in any one year. The term of the alternate members shall be for a period of 1 year.
3. The alternate members of the Commission shall act as a regular member in the absence of a regular member at any meeting or hearing of the Commission.
4. The Commission shall elect a chair and vice-chair from its membership.

B. ***Meetings.*** All meetings of the Commission shall be held at the call of the chair and at such other times as the Commission may determine. Except for executive sessions authorized by law, all meetings of the Commission shall be open to the public.

C. ***Proceedings.*** The Commission shall adopt rules and regulations to govern its proceedings. The minutes and records of all Commission proceedings shall be kept and filed as public records in the office of the Town Clerk. The Executive Secretary of the Commission shall be the Director of Planning.

D. ***Powers and Duties.*** The Commission shall have the following powers and duties:

1. Recommend to the Town Council a General Plan and amendments thereto;
2. Annually review progress towards implementation of the General Plan and recommend to the Town Council changes desired due to new legislation, development trends and changing economic, social and environmental conditions;
3. Review and make recommendations to the Town Council on proposals to amend the Official Zoning Map or the provisions of the Zoning Code;
4. Initiate changes to the Official Zoning Map or text of the Zoning Code to insure conformance and consistency with the Town's General Plan;

5. Review and recommend approval to the Town Council of design guidelines for conducting design review;
6. Approve, approve with modifications and/or conditions, or deny Special and Conditional Use Permits, pursuant to the provisions of Article 5.4: Use Permits;
7. Revoke Administrative Use Permits pursuant to the provisions of Article 5.4: Use Permits;
8. Revoke Special and Conditional Use Permits pursuant to the provisions of Article 5.4: Use Permits;
9. Hear and decide appeals from decision of the Zoning Administrator on applications for Administrative Use Permits;
10. Review applications for Administrative Use Permits upon referral by the Zoning Administrator pursuant to the provisions of Article 5.4: Use Permits;
11. Appoint a Zoning Hearing Officer pursuant to Section 5.107: Zoning Hearing Officer;
12. Approve, approve with modifications and/or conditions or deny preliminary subdivision plats, pursuant to the provisions of Chapter III: Subdivision Regulations;
13. Hear and decide appeals from decisions of the Town Engineer on applications for minor land divisions, pursuant to the provisions of Chapter III: Subdivision Regulations;
14. Hear and decide appeals from decisions of the Director of Planning on applications for administrative relief, pursuant to the provisions of Article 5.3: Administrative Relief from Development Standards;
15. Review and make recommendations to the Town Council on proposals for Protected Development Right Plans pursuant to Article 5.9: Protected Development Right Plan;
16. Approve, approve with modifications and/or conditions, or deny Modification of Separation Fence Requirements, pursuant to Section 4.109G: Modification of Separation Fence Requirements; and
17. Revoke modification of separation fence decisions pursuant to the provisions of Section 4.109G: Modification of Separation Fence Requirements.

5.104 Board of Adjustment

The Board of Adjustment of the Town of Gilbert (the "Board") is established pursuant to Arizona Revised Statutes (A.R.S.) § 9-462.06.

- A. ***Creation and Membership.*** The Planning Commission shall serve as the Board. The Chair of the Board shall be the Chair of the Planning Commission or as designated by the Chair of the Planning Commission.
- B. ***Meetings.*** All meetings of the Board shall be held at the call of the chair and at such other times as the Board may determine. Except for executive sessions authorized by law, all meetings of the Board shall be open to the public.
- C. ***Proceedings.*** The Board shall adopt rules and regulations to govern its proceedings. The minutes and records of all Board proceedings shall be kept and filed as public records in the office of the Town Clerk. The Executive Secretary of the Board shall be the Director of Planning.
- D. ***Powers and Duties.*** The Board has the following powers and duties:
 - 1. Hear and decide appeals from decisions of the Zoning Hearing Officer on applications for variances;
 - 2. Review applications for variances upon referral by the Zoning Hearing Officer pursuant to the provisions of Article 5.5: Variances; and
 - 3. Hear and decide appeals from a decision, determination, or interpretation made by the Zoning Administrator in the enforcement of the Zoning Code pursuant to Section 5.2011: Procedures for Appeals.
- E. ***Ex parte Communications.*** The Board acts in a quasi-judicial manner and shall not entertain, accept or participate in any ex parte communications as set forth in Section 5.209: Ex parte Communications.

5.105 Director of Planning

The Director of Planning (the "Director") administers the Town Planning Department. The Director has the following powers and duties:

- A. Administer the Land Development Code;
- B. Provide professional recommendations to the Town Council, appointed officials and Town management on matters related to the physical development of the community;
- C. Administer the annexation process;

- D. Process, review, and make recommendations to the Planning Commission on applications for:
 - 1. Amendments to the General Plan text or map;
 - 2. Amendments to Land Use Code text or map; and
 - 3. Subdivision Plat maps.
- E. Process, review, and make recommendations with respect to property in the Heritage District Overlay District to the Redevelopment Commission on applications for:
 - 1. Amendments to the General Plan text or map;
 - 2. Amendments to the Zoning Code text or map; and
 - 3. Subdivision Plat maps.
- F. Process, review and make recommendations on applications for design review;
- G. Expand the boundaries of a preliminary design review application to incorporate adjacent properties that are owned by the applicant or are part of the same development;
- H. Perform administrative design review pursuant to Article 5.6: Design Review;
- I. Expand the notification area set forth in Sections 5.204C: Neighborhood Meeting Notification and 5.205: Notice of Public Hearings;
- J. Grant administrative relief from development standards, pursuant to Article 5.3: Administrative Relief from Development Standards;
- K. Determine if applications require a zoning amendment or amendment to the General Plan;
- L. Process and make recommendations on appeals, pursuant to Article 5.10: Appeals of Dedications, Exactions and Zoning Regulations and Reconsideration of Certain Decisions;
- M. Initiate proceedings for the revocation of a protected development right plan, pursuant to Article 5.9: Protected Development Right Plan;
- N. Appoint and supervise the work of the Zoning Administrator;
- O. Make recommendations to the Design Review Board, Redevelopment Commission and Planning Commission on design review guidelines;

- P. Make recommendations to the Zoning Hearing Officer;
- Q. Serve as Executive Secretary of the Board of Adjustment, Planning Commission and Design Review Board;
- R. Waive the pre-application process, pursuant to Section 5.203: Pre-Application Review;
- S. Exercise appeal authority as authorized by the Zoning Code; and
- T. Approve other applications and projects as authorized by the Zoning Code.

5.106 Zoning Administrator

The Zoning Administrator is a member of the Planning Department appointed by the Director of Planning. The Zoning Administrator has the following powers and duties:

- A. Administer and enforce the provisions of the Zoning Code. The enforcement duties may be delegated to the Town Code Compliance and Police Departments.
- B. Interpret the Zoning Code to members of the public and to other Town departments;
- C. Review, approve, approve with modifications and/or conditions or deny applications for Administrative Use Permits, pursuant to the provisions of Article 5.4: Use Permits;
- D. Approve or deny applications for modifications to Administrative Use Permits, pursuant to the provisions of Article 5.4: Use Permits;
- E. Refer to the Planning Commission Administrative Use Permit applications determined in writing by the Zoning Administrator to merit review by the Planning Commission;
- F. Initiate proceedings for the revocation of a use permit, pursuant to the provision of Article 5.4: Use Permits;
- G. Initiate proceedings for the revocation of Modification of Separation Fence Requirements, pursuant to the provisions of Section 4.109G: Modification of Separation Fence Requirements;
- H. Make determinations regarding uses that are not included in a permitted use classification in this Code;
- I. Make determinations regarding parking requirements for uses that are not identified in this Code;
- J. Make determinations regarding Group Homes for the Handicapped, pursuant to the provisions of Section 4.504F: Request for Accommodation;

- K. Make determinations regarding place of worship uses, pursuant to the provisions of Section 4.505A: Request for Determination;
- L. Make determinations regarding non-conforming uses, lots, parcels, structures, and signs, pursuant to the provisions of Section 4.604B: Determination of Status;
- M. Modify or waive equipment cabinet screening requirements for Wireless Communication Facilities, pursuant to the provisions of Section 4.704E: Equipment Cabinets and Buildings; and
- N. Waive standards for the establishment of Amateur Radio Facilities, pursuant to the provisions of Section 4.803E: Amateur (HAM) Radio Facilities.

5.107 Zoning Hearing Officer

The Zoning Hearing Officer (the "Hearing Officer") is a member of the Planning Commission assigned to hear and make decisions on matters within the jurisdiction of the Board of Adjustment, subject to appeal to the Board of Adjustment.

- A. ***Appointment and Procedures.*** Individual members of the Planning Commission who have completed a minimum of 1 year on the Commission may be designated by the Chair as the Hearing Officer and Alternate Hearing Officer of the Town on a rotating basis. The term of the Hearing Officer and Alternate Hearing Officer shall be 24 months. Prior to conducting a hearing, the Hearing Officer shall complete a training course in the legal and procedural requirements of the position. No member of the Commission shall serve as Hearing Officer for more than 24 consecutive months during any 5 year period. Any period of time during which a member of the Commission served as Alternate Hearing Officer shall not be counted when calculating months of service as Hearing Officer.
- B. ***Powers and Duties.*** The Hearing Officer shall have the following powers and duties:
 - 1. Conduct hearings and make decisions on matters within the jurisdiction of the Board of Adjustment, subject to appeal to the Board of Adjustment;
 - 2. Approve, approve with modifications and/or conditions, or deny applications for variances pursuant to Article 5.5: Variances;
 - 3. Refer to the Board of Adjustment applications determined in writing by the Hearing Officer to merit review by the Board of Adjustment;
 - 4. Conduct a hearing, develop findings of fact, and submit a recommendation to the Town Council on requests for reconsideration of decisions pertaining to:

- a. Federal and State Fair Housing Act;
 - b. Federal Religious Land Use and Institutionalized Persons Act or the Arizona Free Exercise of Religion Act;
 - c. Americans with Disabilities Act or the Arizonans with Disabilities Act; and
 - d. Telecommunications Act.
5. Hear and decide appeals from any decision regarding dedications or exactions filed pursuant to A.R.S. § 9-500.12;
 6. Hear and decide appeals by property owners alleging a zoning regulation has created a taking in violation of A.R.S. § 9-500.13; and
 7. Conduct a hearing, develop findings of fact, and submit a recommendation to the Board of Adjustment on requests for determination of non-conforming use status, pursuant to the provisions of Sections 4.604D: Fact Finding by Hearing Officer.
- C. ***Ex parte Communications.*** The Hearing Officer acts in a quasi-judicial manner and shall not entertain, accept or participate in any ex parte communications as set forth in Section 5.209: Ex parte Communications.

5.108 Design Review Board

The Design Review Board is created to evaluate the design of proposed developments to promote projects that are attractive, functional, in harmony with their surroundings, safe and consistent with adopted design guidelines and community goals.

A. *Creation, Membership, and Terms of Office.*

1. The Planning Commission shall serve as the Board. The Chair of the Board shall be the Chair of the Planning Commission.
2. The Design Review Board shall consist of 7 regular members and two alternate members appointed by the Town Council. New members of the Design Review Board shall reside in the Town. A change of residence from the Town of any member shall create a vacancy as of the date of such change of residence. The membership shall include any combination of the following:
 - a. A civil engineer;
 - b. A landscape architect;

- c. An architect other than a landscape architect;
 - d. A construction industry representative;
 - e. A business owner or real estate broker; and
 - f. A private citizen.
3. The term of each regular member of the Design Review Board shall be for a period of 4 years or until his successor assumes office. Members shall serve staggered terms whereby no more than 4 members' terms expire in any 1 year. The term of the alternate members shall be for a period of 1 year.
 4. The alternate member of the Design Review Board shall act as a regular member in the absence of a regular member at any meeting or hearing of the Design Review Board.
 5. The Design Review Board shall elect a chair and vice-chair from its membership.
 6. The Design Review Board members shall serve at the pleasure of the Town Council.
- B. **Meetings.** All meetings of the Design Review Board shall be held at the call of the chair and at such other times as a majority of the Design Review Board may determine.
- C. **Proceedings.** The Design Review Board shall adopt rules and regulations to govern its proceedings. The minutes and records of all Design Review Board proceedings shall be kept and filed as public records in the office of the Town Clerk. The Executive Secretary of the Design Review Board shall be the Director of Planning.
- D. **Powers and Duties.** The Design Review Board shall have the following powers and duties:
1. Approve, approve with modifications and/or conditions, or deny applications for design review pursuant to Article 5.6: Design Review;
 2. Hear and decide appeals from administrative design review decisions of the Director of Planning;
 3. Advise departments and elected and appointed bodies on matters related to community design;
 4. Review and make recommendations to the Town Council on proposals for Protected Development Right Plans pursuant to Article 5.9: Protected Development Right Plan; and

5. Conduct public hearings as required by the Zoning Code.

5.109 Redevelopment Commission

The Redevelopment Commission is created to encourage development and redevelopment in the Heritage District Overlay District and other redevelopment areas designated by the Town Council, consistent with any adopted redevelopment plan and other applicable requirements.

A. *Creation, Membership, and Terms of Office.*

1. The Redevelopment Commission shall consist of 5 regular members appointed by the Mayor. Members of the Redevelopment Commission shall be residents of the Town. The membership should include at least:
 - a. One architect, landscape architect, planner, designer or otherwise qualified by design background;
 - b. One land development or construction industry representative; and
 - c. One with a financial services background.
2. The term of each regular member of the Redevelopment Commission shall be for a period of 4 years or until his successor assumes office. Members shall serve staggered terms whereby no more than 2 members' terms expire in any 1 year.
3. The Mayor shall annually appoint a chair and vice-chair from among the members of the Redevelopment Commission.
4. The Redevelopment Commissioner shall meet all requirements of A.R.S. tit. 36, ch. 12, art. 3 for membership on the Redevelopment Commission
5. A Redevelopment Commissioner may be removed from office by the Mayor for inefficiency, neglect of duty or misconduct in office, but only after a hearing and after the commissioner has been given a copy of the charges at least 10 days prior to the hearing and had an opportunity to be heard in person or by counsel. A Commissioner's absence from 3 consecutive meetings may be considered neglect of duty for purposes of this section.

B. *Meetings.* All meetings of the Redevelopment Commission shall be held at the call of the chair and at such other times as a majority of the Redevelopment Commission may determine.

C. *Proceedings.* The Redevelopment Commission shall adopt rules and regulations to govern its proceedings. The minutes and records of all Redevelopment Commission proceedings shall be kept and filed as public records in the office of the Town Clerk.

The Executive Secretary of the Redevelopment Commission shall be the Director of Economic Development.

D. ***Powers and Duties.*** The Redevelopment Commission shall have the following powers and duties with respect to property in the Heritage District Overlay District and other redevelopment areas designated by the Town Council:

1. All powers conferred upon municipalities by the provisions of A.R.S. tit. 36, ch. 12, art. 3, except the power to borrow money, issue bonds, acquire and dispose of real property, enter into contracts with the federal government or any public body, prepare a general plan for the development of the town or approve redevelopment plans;
2. Recommend to the Town Council a Redevelopment Plan and amendments thereto;
3. Review and make recommendations to the Planning Commission on proposals to amend the Official Zoning Map or the provisions of the Zoning Code;
4. Approve, approve with modifications and/or conditions, or deny applications for design review pursuant to Article 5.6: Design Review;
5. Hear and decide appeals from administrative design review decisions of the Director of Planning;
6. Review and recommend approval to the Town Council of design guidelines for the Heritage District Overlay District;
7. Review and recommend approval, approval with modifications and/or conditions, or denial to the Planning Commission of Special and Conditional Use Permits, pursuant to the provisions of Article 5.4: Use Permits;
8. Review and comment to the Planning Commission on appeals of Administrative Use Permits;
9. Review and recommend approval, approval with modifications and/or conditions, or denial to the Planning Commission of preliminary subdivision plats, pursuant to the provisions of Chapter III: Subdivision Regulations;
10. Review and comment on applications for zoning, General Plan Amendments, Subdivisions, Variances, Design Review, and Use Permits within 1,000 feet of the exterior boundaries of the Heritage District Redevelopment Area; and
11. Conduct public hearings as required by the Zoning Code.

5.1010 Code Compliance Manager

The Code Compliance Manager, pursuant to Chapter 2, Article III, Division 6 of the Gilbert Municipal Code, is a member of the Building and Code Compliance Department and administers the Code Compliance Division. The Code Compliance Manager shall enforce the provisions of the Land Development Code, including conducting inspections and issuing warrants and citations as provided for by State law and local ordinance.

5.1011 Civil Hearing Officer

The Presiding Judge of the Gilbert Municipal Court shall appoint one or more Civil Hearing Officers to hear and decide matters related to violations of the Zoning Code. The Civil Hearing Officers shall hear and decide civil actions for violations of a zoning ordinance, the Zoning Code, a use permit, variance, Design Review approval, or administrative design review decisions of the Director of Planning. The Civil Hearing Officers shall act under the authority of the Presiding Judge. Decisions of a Civil Hearing Officer are appealable to the superior court pursuant to A.R.S. tit. 22, ch. 2, art. 4 (A.R.S. § 22-261 et seq.).