

Ordinance 2017-04

AN ORDINANCE AMENDING THE LAND MANAGEMENT CODE OF PARK CITY, UTAH, REVISING CHAPTER 1 GENERAL PROVISIONS AND PROCEDURES AND CHAPTER 11 HISTORIC PRESERVATION

WHEREAS, the Land Management Code was adopted by the City Council of Park City, Utah to promote the health, safety and welfare of the residents, visitors, and property owners of Park City; and

WHEREAS, the Land Management Code implements the goals, objectives, and policies of the Park City General Plan to maintain the quality of life and experiences for its residents and visitors; and to preserve the community's unique character and values; and

WHEREAS, the City reviews the Land Management Code on a regular basis and identifies necessary amendments to address planning and zoning issues that have come up; to address specific LMC issues raised by Staff, Planning Commission, and City Council; and to align the Code with the State Code and Council's goals; and

WHEREAS, Chapter 1 provides a description of general provisions and procedures of the Park City's land development and management code that the City desires to revise. These revisions are specifically related to the non-adversarial appeals and ability to allow new evidence at appeal level, standards for continuations, and clarification regarding zoning when previously State or Federal land; and

WHEREAS, Chapter 11 provides a description of requirements, provisions, and procedures specific to Historic Preservation. These revisions concern Determination of Significance applications and timing of hearings; and

WHEREAS, the Planning Commission hearing was duly noticed, a public hearing was conducted at the regularly scheduled meeting on October 26, 2016, and the Commission forwarded a positive recommendation to City Council; and

WHEREAS, the City Council hearing was duly noticed and a public hearing was conducted at its regularly scheduled meeting on February 16, 2017; and

WHEREAS, it is in the best interest of the residents of Park City, Utah to amend the Land Management Code to be consistent with the State of Utah Code and the Park City General Plan and to be consistent with the values and goals of the Park City community and City Council, to protect health and safety, to maintain the quality of life for its residents, to preserve and protect the residential neighborhoods, to ensure compatible development, to preserve historic resources, to protect environmentally sensitive lands, and to preserve the community's unique character.

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

SECTION 1. AMENDMENTS TO TITLE 15 - Land Management Code Chapter One (General Provisions and Procedures). The recitals above are incorporated herein as findings of fact. Chapter 1 of the Land Management Code of Park City is hereby amended as redlined (see Exhibit A).

SECTION 2. AMENDMENTS TO TITLE 15 - Land Management Code Chapter 11 (Historic Preservation). The recitals above are incorporated herein as findings of fact. Chapter 11 of the Land Management Code of Park City is hereby amended as redlined (see Exhibit E).

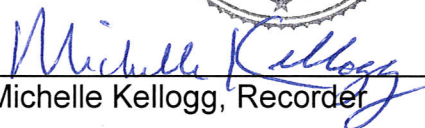
SECTION 3. EFFECTIVE DATE. This Ordinance shall be effective upon publication.

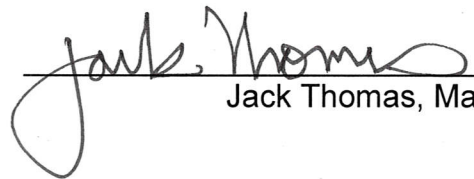
PASSED AND ADOPTED this 16th day of February, 2017

PARK CITY MUNICIPAL CORPORATION



Attest:


Michelle Kellogg, Recorder


Jack Thomas, Mayor

Approved as to form:


Mark Harrington, City Attorney

Exhibits (Redlines of specific LMC Sections)

Exhibit A – Chapter 1 General Provisions and Procedures

Exhibit B – Chapter 11 Historic Preservation

Exhibit A – LMC Chapter One- General Provisions and Procedures

15-1-6 Zone Districts and Zone Map

In order to carry out the purposes of the LMC, Zoning Districts have been established as set forth in LMC Chapters 15-2 and as identified on the Official Zoning Map. In interpreting the Official Zoning Map, the following standards shall apply:

- A. The zoning boundary lines are intended to conform to existing Property boundary lines when not in a public Right-of-Way, or to follow the center line of public Rights-of-Way, including prescriptive Rights-of-Way, unless the lines are located by specific dimensions, in which case the dimensions shall control.
- B. Where the Zoning District lines appear to have intentionally divided a Lot or Parcel between two (2) or more districts, the applicable zoning for each portion of the Lot or Parcel must be determined by using the scale shown on the map.
- C. There is no minimum Area or diversity of ownership requirement for a zone designation. Neither the size of a Zoning District nor the number of landowners within the district may be used as evidence of the illegality of a Zoning District or of the invalidity of a municipal decision.
- D. All property within the City limits is subject to the City's Zoning Districts, including State or Federal property which may be exempt from the City's land use ordinance and jurisdiction. If such zoning is subsequently invalidated, no building permit, subdivision or approval for any development activity may be applied for until the City establishes a valid zoning for the property.

[...]

15-1-12.5 Continuations

Planning Staff shall have the authority to approve an applicant's request for a continuance for an item scheduled for a public hearing or an item scheduled for an appeal, up to two (2) times, so long as the request for the continuance is made in writing and is received by Planning Staff at least five (5) business days prior to the scheduled public hearing or appeal. If Planning Staff does not have the authority to continue an item, the Board, Commission or Council will determined if there is a sufficient reason to continue the item on the scheduled date. If it is determined there is not sufficient reason to continue the item, the item will remain on the agenda and be considered.

[...]

15-1-18 Appeals and Reconsideration Process

- A. **STAFF.** Any decision by either the Planning Director or Planning Staff regarding Application of this LMC to a Property may be appealed to the Planning Commission. Appeals of decisions regarding the Design Guidelines for Historic Districts and Historic Sites shall be reviewed by the Board of Adjustment.

- B. **HISTORIC PRESERVATION BOARD (HPB)**. The City or any Person with standing adversely affected by any decision of the Historic Preservation Board may be appealed to the Board of Adjustment.
- C. **PLANNING COMMISSION**. The City or any Person with standing adversely affected by a Final Action by the Planning Commission on appeals of Staff action may petition the District Court in Summit County for a review of the decision. Final Action by the Planning Commission on Conditional Use permits and Master Planned Developments (MPDs) involving City Development may be appealed to the Board of Adjustment at the City Council's request. All other Final Action by the Planning Commission concerning Conditional Use permits (excluding those Conditional Use permits decided by Staff and appealed to the Planning Commission; final action on such an appeal shall be appealed to the District Court) and MPDs may be appealed to the City Council. When the City Council determines it necessary to ensure fair due process for all affected parties or to otherwise preserve the appearance of fairness in any appeal, the City Council may appoint an appeal panel as appeal authority to hear any appeal or call up that the Council would otherwise have jurisdiction to hear. The appeal panel will have the same scope of authority and standard of review as the City Council. Only those decisions in which the Planning Commission has applied a land Use ordinance to a particular Application, Person, or Parcel may be appealed to an appeal authority.

1. **APPEAL PANEL MEMBERSHIP AND QUALIFICATIONS**. The appeal panel shall have three (3) members. The decision to appoint and the appointment of an appeal panel shall be made by the City Council at a duly noticed public meeting after publicly noticed request for qualifications. Qualifications shall include a weighted priority for the following: Park City or Area residency, five years or more of prior experience in an adjudicative position, and/or a legal or planning degree. Each member of the appeal panel shall have the ability to:
 - a. Conduct quasi-judicial administrative hearings in an orderly, impartial and highly professional manner.
 - b. Follow complex oral and written arguments and identify key issues of local concern.
 - c. Master non-legal concepts required to analyze specific situations, render findings and determinations.
 - d. Absent any conflict of interest, render findings and determinations on cases heard, based on neutral consideration of the issues, sound legal reasoning, and good judgment.
2. **PROCESS**. Any hearing before an appeal panel shall be publicly noticed, include a public hearing, and meet all requirements of the Utah Open and Public Meetings Act. The appeal panel shall have the same authority and follow the same procedures as designated for the "City Council" in this section 15-1-18 (G-I). The City Council may decide to appoint an appeal panel for a particular matter at any time an application is pending but the

appointment of the individual members of the panel shall not occur until an actual appeal or call up is pending.

- D. **STANDING TO APPEAL**. The following has standing to appeal a Final Action:
1. Any Person who submitted written comment or testified on a proposal before the Planning Department, Historic Preservation Board or Planning Commission;
 2. The Owner of any Property within three hundred feet (300') of the boundary of the subject site;
 3. Any City official, Board or Commission having jurisdiction over the matter; and
 4. The Owner of the subject Property.
- E. **TIMING**. All appeals must be made within ten (10) calendar days of the Final Action. The reviewing body, with the consultation of the appellant, shall set a date for the appeal. All appeals shall be heard by the reviewing body within forty-five (45) days of the date that the appellant files an appeal unless all parties, including the City, stipulate otherwise.
- F. **FORM OF APPEALS**. Appeals to the Planning Commission, Board of Adjustment, or Historic Preservation Board must be filed with the Planning Department. Appeals to the City Council must be filed with the City Recorder. Appeals must be by letter or petition, and must contain the name, address, and telephone number of the petitioner; his or her relationship to the project or subject Property; and must have a comprehensive statement of all the reasons for the appeal, including specific provisions of the law, if known, that are alleged to be violated by the action taken. The Appellant shall pay the applicable fee established by resolution when filing the appeal. The Appellant shall present to the appeal authority every theory of relief that it can raise in district court. The Appellant shall provide required envelopes within fourteen (14) days of filing the appeal.
- G. **BURDEN OF PROOF AND STANDARD OF REVIEW**. The appeal authority shall act in a quasi-judicial manner. The appellant has the burden of proving that the land use authority erred. The appeal authority shall review factual matters de novo and it shall determine the correctness of the decision of the land use authority in its interpretation and application of the land use ordinance. All appeals must be made in writing. Review of petitions of appeal shall include a public hearing and shall be limited to consideration of only those matters raised by the petition(s), unless the appeal authority grants either party approval to enlarge the scope of the appeal to accept information on other matters. New evidence may be received so long as it relates to the scope of the appeal.
- H. **NON-ADVERSARIAL PROCESS**. For all appeals before City Council, and any Board or Commission, the following shall apply:
1. The procedural hearings and reviews established by the City's regulatory procedures, does not adopt or utilize in any way the adversary criminal or civil justice system used in the courts.
 2. The role of City staff, including legal staff, is to provide technical and legal advice and professional judgment to each decision making body, including

City Council as they are not advocates of any party or position in a dispute, notwithstanding the fact that their technical and legal advice and professional judgment may lead them to make recommendations concerning the matter.

3. In the absence of clear evidence in the record that a staff member has lost his or her impartiality as a technical adviser, the City's need for consistent, coherent and experienced advisers outweighs any claims of bias by the applicant.

I. **WRITTEN FINDINGS REQUIRED.** The appeal authority shall direct staff to prepare detailed written Findings of Fact, Conclusions of Law and the Order.

J. **CITY COUNCIL ACTION ON APPEALS.**

1. The City Council, with the consultation of the appellant, shall set a date for the appeal.

2. The City Recorder shall notify the Property Owner and/or the Applicant of the appeal date. The City Recorder shall obtain the findings, conclusions and all other pertinent information from the Planning Department and shall transmit them to the Council.

3. The City Council may affirm, reverse, or affirm in part and reverse in part any properly appealed decision of the Planning Commission. The City Council may remand the matter to the appropriate body with directions for specific Areas of review or clarification. City Council review of petitions of appeal shall include a public hearing and be limited to consideration of only those matters raised by the petition(s), unless the Council by motion enlarges the scope of the appeal to accept information on other matters.

4. Staff must prepare written findings within fifteen (15) working days of the City Council vote on the matter.

K. **CITY COUNCIL CALL-UP.** Within fifteen (15) calendar days of Final Action on any project, the City Council, on its own motion, may call up any Final Action taken by the Planning Commission or Planning Director for review by the Council. Call-ups involving City Development may be heard by the Board of Adjustment at the City Council's request. The call-up shall require the majority vote of the Council. Notice of the call-up shall be given to the Chairman of the Commission and/or Planning Director by the Recorder, together with the date set by the Council for consideration of the merits of the matter. The Recorder shall also provide notice as required by Sections 15-1 -12 and 15-1-18 (K) herein. In calling a matter up, the Council may limit the scope of the call-up hearing to certain issues. The City Council, with the consultation of the Applicant, shall set a date for the call-up. The City Recorder shall notify the Applicant of the call-up date. The City Recorder shall obtain the findings and all other pertinent information and transmit them to the Council.

L. **NOTICE.** There shall be no additional notice for appeals of Staff determination other than listing the matter on the agenda, unless notice of the Staff review was provided, in which case the same notice must be given for the appeal. Notice of appeals of Final Action by the Planning Commission and Historic

Preservation Board; notice of all appeals to City Council, reconsiderations, or call-ups shall be given by:

1. Publishing the matter once at least fourteen (14) days prior to the first hearing in a newspaper having general circulation in Park City;
2. Mailing courtesy notice at least fourteen (14) days prior to the first hearing to all parties who received mailed courtesy notice for the original action.
3. Posting the Property at least fourteen (14) days prior to the first hearing; and
4. Publishing notice on the Utah Public Notice Website at least fourteen (14) days prior to the first hearing.

- M. **STAY OF APPROVAL PENDING REVIEW OF APPEAL**. Upon the filing of an appeal, any approval granted under this Chapter will be suspended until the appeal body, pursuant to this Section 15-1-18 has acted on the appeal.
- N. **APPEAL FROM THE CITY COUNCIL**. The Applicant or any Person aggrieved by City action on the project may appeal the Final Action by the City Council to a court of competent jurisdiction. The decision of the Council stands, and those affected by the decision may act in reliance on it unless and until the court enters an interlocutory or final order modifying the decision.
- O. **RECONSIDERATION**. The City Council, and any Board or Commission, may reconsider at any time any legislative decision upon an affirmative vote of a majority of that body. The City Council, and any Board or Commission, may reconsider any quasi-judicial decision upon an affirmative vote of a majority of that body at any time prior to Final Action. Any action taken by the deciding body shall not be reconsidered or rescinded at a special meeting unless the number of members of the deciding body present at the special meeting is equal to or greater than the number of members present at the meeting when the action was approved.
- P. No participating member of the appeal panel may entertain an appeal in which he or she acted as the land Use authority.

Exhibit B - Chapter 11 Historic Preservation

15-11-10 Park City Historic Sites Inventory

The Historic Preservation Board may designate Sites to the Historic Sites Inventory as a means of providing recognition to and encouraging the Preservation of Historic Sites in the community.

A. CRITERIA FOR DESIGNATING SITES TO THE PARK CITY HISTORIC SITES INVENTORY.

1. **LANDMARK SITE.** Any Buildings (main, attached, detached, or public), Accessory Buildings, and/or Structures may be designated to the Historic Sites Inventory as a Landmark Site if the Historic Preservation Board finds it meets all the criteria listed below:
 - a. It is at least fifty (50) years old or if the Site is of exceptional importance to the community; and
 - b. It retains its Historic Integrity in terms of location, design, setting, materials, workmanship, feeling and association as defined by the National Park Service for the National Register of Historic Places; and
 - c. It is significant in local, regional or national history, architecture, engineering or culture associated with at least one (1) of the following:
 1. An era that has made a significant contribution to the broad patterns of our history; or
 2. The lives of Persons significant in the history of the community, state, region, or nation; or
 3. The distinctive characteristics of type, period, or method of construction or the work of a notable architect or master craftsman.
2. **SIGNIFICANT SITE.** Any Buildings (main, attached, detached or public), Accessory Buildings and/or Structures may be designated to the Historic Sites Inventory as a Significant Site if the Historic Preservation Board finds it meets all the criteria listed below:
 - a. It is at least fifty (50) years old or the Site is of exceptional importance to the community; and
 - b. It retains its Essential Historic Form as may be demonstrated but not limited by any of the following:
 1. It previously received a historic grant from the City; or
 2. It was previously listed on the Historic Sites Inventory; or
 3. It was listed as Significant on any reconnaissance or intensive level survey of historic resources; and

- c. It has one (1) or more of the following:
 - 1. It retains its historic scale, context, materials in a manner and degree which can be restored to its Essential Historic Form even if it has non-historic additions; or
 - 2. It reflects the Historical or Architectural character of the site or district through design characteristics such as mass, scale, composition, materials, treatment, cornice, and/or other architectural features as are Visually Compatible to the Mining Era Residences National Register District even if it has non-historic additions; and
- d. It is important in local or regional history architecture, engineering, or culture associated with at least one (1) of the following:
 - 1. An era of Historic Importance to the community, or
 - 2. Lives of Persons who were of Historic importance to the community, or
 - 3. Noteworthy methods of construction, materials, or craftsmanship used during the Historic period.
- 3. **CONTRIBUTORY SITE.** Any Buildings (main, attached, detached or public), Accessory Buildings and/or Structures may be designated to the Historic Sites Inventory as a Contributory Site if the Planning Department finds it meets all the criteria listed below:
 - a. The structure is forty (40) years old or older (this includes buildings not historic to Park City that were relocated to prevent demolition); and
 - b. Meets one of the following:
 - 1. Expresses design characteristics such as mass, scale, composition, materials, treatment, cornice, and/or other architectural features as are Visually Compatible to the Mining Era Residences National Register District; or
 - 2. It is important in local or regional history, architecture, engineering, or culture associated with at least one (1) of the following:
 - 1. An era of Historic importance to the community; or
 - 2. Lives of Persons who were of Historic importance to the community, or
 - 3. Noteworthy methods of construction, materials, or craftsmanship used during the Historic Period
 - c. Contributory structures may be eligible for Historic District Grant funding. Contributory structures are eligible for demolition.
- 4. Any Development involving the Reassembly or Reconstruction of a Landmark Site or a Significant Site that is executed pursuant to Sections

15-11-14 or 15-11-15 of this code shall remain on the Park City Historic Sites Inventory. Following Reassembly or Reconstruction, the Historic Preservation Board will review the project to determine if the work has required a change in the site or structure's historic designation from Landmark to Significant.

B. PROCEDURE FOR DESIGNATING SITES TO THE PARK CITY HISTORIC SITES INVENTORY.

The Planning Department shall maintain an inventory of Historic Sites. It is hereby declared that all Buildings (main, attached, detached or public), Accessory Buildings, and/or Structures within Park City, which comply with the criteria found in Sections 15-11-10(A)(1) or 15-11-10(A)(2) are determined to be on the Park City Historic Sites Inventory.

Any Owner of a Building (main, attached, detached or public), Accessory Building, and/or Structure, may nominate it for listing in the Park City Historic Sites Inventory. The Planning Department may nominate a Building (main, attached, detached or public), Accessory Building, and/or Structure for listing in the Park City Historic Sites Inventory. The nomination and designation procedures are as follows:

1. **COMPLETE APPLICATION.** The Application shall be on forms as prescribed by the City and shall be filed with the Planning Department. Upon receiving a Complete Application for designation, the Planning staff shall hold a hearing before the Historic Preservation Board within ninety (90) days.
2. **NOTICE.** Prior to taking action on the Application, the Planning staff shall provide public notice pursuant to Section 15-1-21 of this Code.
3. **HEARING AND DECISION.** The Historic Preservation Board will hold a public hearing and will review the Application for compliance with the "Criteria for Designating Historic Sites to the Park City Historic Sites Inventory." If the Historic Preservation Board finds that the Application complies with the criteria set forth in Section 15-11-10(A)(1) or Section 15-11-10(A)(2), the Building (main, attached, detached or public), Accessory Building, and/or Structure will be added to the Historic Sites Inventory. The HPB shall forward a copy of its written findings to the Owner and/or Applicant.

C. REMOVAL OF A SITE FROM THE PARK CITY HISTORIC SITES INVENTORY.

The Historic Preservation Board may remove a Site from the Historic Sites Inventory. Any Owner of a Site listed on the Park City Historic Sites Inventory may submit an Application for the removal of his/her Site from the Park City Historic Sites Inventory. The Planning Department may submit an Application for the removal of a Site from the Park City Historic Sites Inventory. The criteria and

procedures for removing a Site from the Park City Historic Sites Inventory are as follows:

1. CRITERIA FOR REMOVAL.

- a. The Site no longer meets the criteria set forth in Section 15-11-10(A)(1) or 15-11-10(A)(2) because the qualities that caused it to be originally designated have been lost or destroyed; or
- b. The Building (main, attached, detached, or public) Accessory Building, and/or Structure on the Site has been demolished and will not be reconstructed; or
- c. Additional information indicates that the Building, Accessory Building, and/or Structure on the Site do not comply with the criteria set forth in Section 15-11-10(A)(1) or 15-11-10(A)(2).

2. PROCEDURE FOR REMOVAL.

- a. **Complete Application.** The Application shall be on forms as prescribed by the City and shall be filed with the Planning Department. Upon receiving a Complete Application for removal, the Planning staff shall hold a hearing before the Historic Preservation Board within ninety (90) days.
- b. **Notice.** Prior to taking action on the Application, the Planning staff shall provide public notice pursuant to Section 15-1-21 of this Code.
- c. **Hearing and Decision.** The Historic Preservation Board will hear testimony from the Applicant and public and will review the Application for compliance with the "Criteria for Designating Historic Sites to the Park City Historic Sites Inventory." The HPB shall review the Application "de novo" giving no deference to the prior determination. The Applicant has the burden of proof in removing the Site from the inventory. If the HPB finds that the Application does not comply with the criteria set forth in Section 15-11-10(A)(1) or Section 15-11-10(A)(2), the Building (main, attached, detached, or public) Accessory Building, and/or Structure will be removed from the Historic Sites Inventory. The HPB shall forward a copy of its written findings to the Owner and/or Applicant.