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**ADMINISTRATIVE RULES OF PROCEDURE  
QUASI-JUDICIAL APPEALS PURSUANT TO TITLE 8 OF THE GARDEN CITY CODE  
BEFORE THE CITY COUNCIL OF THE CITY OF GARDEN CITY, IDAHO**

**Conflicts**

**At the beginning of the hearing: the Mayor shall ask members of the Council if they have any actual and potential conflicts of interest in the appeal.**

- (1) A Councilmember with an actual or potential conflict of interest should disclose on the record the basis of the Councilmember's disqualification, and may ask the parties to consider, out of the presence of the Councilmember, whether to waive disqualification.
- (2) If following disclosure of any basis for disqualification other than personal bias or prejudice concerning a party, the parties, without participation by the Councilmember, all agree that the Councilmember should not be disqualified, and the Councilmember is then willing to participate, the Councilmember may participate in the proceeding.
- (3) Any agreement regarding a conflict of interest shall be incorporated in the record of the proceeding.

**A conflict of interest is:** any official action, decision or recommendation by a public official, which would be to the private financial benefit of the individual or a member of their household, or a business with which the person or a member of their household is associated. Idaho Code Title 59, Chapter 7, prohibits public officials from taking any official action or making a decision or recommendation on any matter where the official has a conflict of interest and has failed to disclose the conflict of interest. Members of the City Council must regulate themselves against actual and potential conflicts of interest in the discharge of their prescribed duties.

**Actual and potential conflicts of interest:** the Councilmember must immediately discontinue any involvement in the matter including discussions of it with other members or staff. Further, a Councilmember shall not participate in any matter if a judge similarly situated would be required to disqualify himself or herself under the Idaho Code of Judicial Conduct.

**Accordingly, a Councilmember shall disqualify himself or herself:** in a proceeding in which that person's impartiality might reasonably be questioned, including but not limited to instances where:

- (1) The Councilmember has a personal bias or prejudice concerning a party or a party's representative, or has personal knowledge of disputed evidentiary facts that might reasonably affect the Councilmember's impartiality in the proceedings;
- (2) The Councilmember served as a party or representative in the matter in controversy, or the Councilmember has been or is a material witness concerning it;
- (3) The Councilmember knows that he or she, individually or as a fiduciary, or the Councilmember's spouse, parent or child wherever residing, or any other member of the Councilmember's family residing in the Councilmember's household, has an economic interest in the subject matter in controversy or in a party to the proceeding or has any other more than de minimis interest that could be substantially affected by the proceeding;
- (4) The Councilmember or the Councilmember's spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:
  - (a) is a party to the proceeding, or an officer, director or trustee of a party;
  - (b) is acting as a lawyer in the proceeding;
  - (c) is known by the Councilmember to have a more than de minimis interest that could be substantially affected by the proceeding;
  - (d) is to the Councilmember's knowledge likely to be a material witness in the proceeding.

**Recusal requires that a Councilmember shall not:**

- (1) Have access to the investigative file;
- (2) Receive any of the staff reports;
- (3) Give advice in the matter;
- (4) Make recommendations in the matter;
- (5) Be present during the meeting in which that member has been recused;
- (6) Participate in consideration of the matter;
- (7) In any way assume responsibility for any aspect of the deliberative process; or
- (8) Participate in any manner.

**Disclosure of a conflict:** does not affect a Councilmember's authority to be counted for purposes of determining a quorum.

**Title 8 of the Garden City Code**

The following shall be utilized as rules of procedure for hearing and deciding appeals of orders, decisions and/or determinations made by the Planning and Zoning Commission relative to the application and interpretation of Title 8 of the Garden City Code and all of the other codes enumerated within it.

**At the beginning of the hearing:** after asking members of the Council if they have any actual and potential conflicts of interest, the Mayor may:

- (1) Identify for the record each of the orders, decisions, and/or determinations being appealed;

- (2) Ask the parties if they have any issues with the content of the record and/or transcript if one exists, and whether they intend on presenting any new evidence;
- (3) Identify for the record what the standard of review is;
- (4) Identify for the records which party has the burden of proof;
- (5) Identify for the record the order of the hearing;
- (6) Identify for the record what City Council action is required;
- (7) Identify for the record what the City Council decision may include (affirming, vacating, remanding, and/or reversing);
- (8) Identify the possible grounds for affirming the order, decision and/or determinations by the Planning and Zoning Commission; and
- (9) Identify the possible grounds for vacating, remanding, or reversing the order, decision and/or determinations by the Planning and Zoning Commission.

**The evidence and information considered:** unless the City Council directs otherwise, the appeal will be on the record of the Planning and Zoning Commission, including the audio recording or transcript if one exists of the hearing in front of the Planning and Zoning Commission, and such new evidence as may be presented.

- (1) The parties should be prepared to present the City Council with citations to the record and/or transcript if one exists by page number, which supports the parties' respective arguments.
- (2) If asking questions of the parties, the City Council should be prepared to reference citations to the record and/or transcript if one exists by page number.

**Standard of Review:** the City Council's role is to review the decision(s) of the Planning and Zoning Commission. When reviewing a decision of the Planning and Zoning Commission, the City Council shall review the record of the Commission with due regard for the Commission's decision. The standard of review of an appeal from a Planning Commission decision to the City Council shall not be de novo but the record may be supplemented by such new evidence as may be presented. The standard of review shall be governed by the following:

- (1) **Deference:** due deference shall be given to the actions of the Planning and Zoning Commission.

**Burden of Proof:** in all appeals pursuant to Title 8 of the Garden City Code, the burden of proof shall be on the appellant.

**Order of Hearing:** First the appellant shall present its argument. Second, the respondent shall present its argument. Third, then the appellant shall present any rebuttal argument.

**City Council Action Required:** deliberations and the oral opinion for each item being appealed must be concluded prior to adjournment of hearing. A decision for each item being appealed must be determined through a separate motion and voted on through a roll call vote so that each member of the City Council may make his or her vote individually. After the hearing on the appeal, the City Council shall make its written

decision and adopt findings of fact and conclusions by its next regularly scheduled meeting.

**City Council decisions may include:** in part or in the entirety, the action to affirm, vacate, remand, and/or reverse. The actions shall mean the following:

- (1) **Affirm:** to agree with and confirm the Planning and Zoning Commission's decision.
- (2) **Vacate:** to cancel or render the Planning and Zoning Commission's decision null and void.
- (3) **Remand:** to send back to the Planning and Zoning Commission for further action. A remand shall include either specific issues to be considered alone or direction that the Planning Commission opens the entire application for *de novo* review.
- (4) **Reverse:** to change the Planning and Zoning Commission's decision so that the decision of the Commission is overturned.

**Grounds for affirming the decision by the Planning and Zoning Commission:** the following may serve as grounds for affirming the Planning Commission decision:

- (1) If the Planning and Zoning Commission's findings, inferences, conclusions, or decisions are not in violation of constitutional or statutory provisions;
- (2) If the Planning and Zoning Commission's findings, inferences, conclusions, or decisions are not in excess of the statutory authority of the agency;
- (3) If the Planning and Zoning Commission's findings, inferences, conclusions, or decisions are not made upon unlawful procedure;
- (4) If the Planning and Zoning Commission's findings, inferences, conclusions, or decisions are supported by substantial evidence on the record as a whole;
- (5) If the Planning and Zoning Commission's findings, inferences, conclusions, or decisions are not arbitrary, capricious, or an abuse of discretion.

**Grounds for vacating, remanding, or reversing the decision by the Planning and Zoning Commission:** the following may serve as grounds for vacating, remanding, or reversing all or part of a Planning Commission decision:

- (1) If the true intent of Title 8 of the Garden City Code or the codes adopted thereunder have been incorrectly interpreted by the Planning and Zoning Commission;
- (2) If the provisions of Title 8 of the Garden City Code or the codes adopted thereunder do not apply or an equally good or better form of construction should have been applied by the Planning and Zoning Commission;
- (3) If findings made by the Planning and Zoning Commission as a basis for its action are not supported by the weight of the evidence;
- (4) If there is a significant error in the application of the provisions of Title 8 or other provisions of the City Code that is important to sustaining the action by the Planning and Zoning Commission;
- (5) If it is determined that there is a significant violation of the notice provisions of the codes enumerated in Title 8 of the Garden City Code;

- (6) If significant errors are discovered after the Planning and Zoning Commission hearing on which its action was taken in the materials provided to the Planning and Zoning Commission as a basis of its decision;
- (7) If there is a significant error in the application of approved City policies that is important to sustaining the action taken by the Planning and Zoning Commission.