

CHAPTER 3 - ZONING PROCEDURES

SEC. 3.0 GENERAL PROCEDURAL REQUIREMENTS.

A. Application Process: The purpose of this chapter is to provide procedures for the processing of applications for amendments to the text of this Ordinance, the Official Zoning Map(s), the General Plan, Use Permits, Variances, Site Plan Reviews, Applications for Development, and Appeals. Although the specific procedures followed in reviewing the various applications differ, the procedures for all applications have three (3) common elements: (1) submittal of a completed Town application, together with the required fee payment and appropriate information; (2) review of the submittal by appropriate Town staff, agencies, Commission, and Boards; and (3) action to approve, approve with conditions, or deny the request or application.

1. Pre-application Conference. The applicant shall meet with the Zoning Administrator to discuss the nature of the proposed application, application submittal requirements, the procedure for action, and the standards for evaluation of the application.
2. Sketch Plan. The applicant, at the time of the pre-application conference, shall provide the Zoning Administrator with a sketch plan depicting the boundaries of the property being considered and a tentative development proposal for the property.
3. Complete Submittal. Following the pre-application conference, the applicant shall submit the required materials to the Zoning Administrator. Only complete applications shall be accepted.

B. Planning Commission: The Commission shall hold regularly scheduled public hearings to receive and review public input as required by this Ordinance. On those items where it has review authority, the Commission shall recommend that the Council approve, approve with conditions or deny the application. Commission recommendations shall be based on, but not limited to, all of the following:

1. Conformance with this Ordinance, the Subdivision Ordinance, and all other applicable Town policies, rules and regulations;
2. Conformance to the Cave Creek General Plan and other adopted plans;
3. Staff recommendations;
4. Review agency input;

5. Public input and testimony received at the hearing;
 6. Effects of the proposal on the health, safety and welfare of the neighborhood, area, and community-at-large;
 7. Conformance with applicable Arizona law.
- C. Records:** The Town shall provide for minutes to be written and retained which shall include a record of the evidence submitted, and a summary of the considerations and action taken by the Commission.
- D. Town Council:** The Council shall hold regularly scheduled public hearings to act upon all items as required by this Ordinance. The Council shall decide whether to approve, approve with conditions, or deny an application. Council action shall be based on, but not limited to, all of the following:
1. Planning Commission recommendations;
 2. Conformance with this Ordinance, the Subdivision Ordinance, and all other applicable Town policies, rules and regulations;
 3. Conformance with the General Plan, and other adopted plans;
 4. Staff recommendations;
 5. Review agency input;
 6. Public input and testimony received at the hearing;
 7. Effects of the proposal on the health, safety and welfare of the neighborhood, area, and community-at-large;
 8. Conformance with applicable Arizona law.
- E. Scope of Action:** The reviewing body may take any action on the application that is consistent with the public notice. The reviewing body may allow amendments to the application if the effect of the amendments is to decrease the intensity or density from that requested on the original application, or to reduce the impact of the development or the amount of land involved in the development. The reviewing body shall not, in any case, permit a greater intensity or density of development, a greater modification or a use permitted only in a different general use category, or affecting a larger land area than indicated in the application and notice.

SEC. 3.1 NOTIFICATION FOR PUBLIC HEARINGS.

- A. **Notice Requirements.** Notification of public hearing(s) required by this Ordinance shall be subject to the notice requirements set forth in A.R.S. §9-462 *et seq.*, and in this Ordinance. In the event of conflict between state law and this Ordinance, state law shall control.
- B. **Notification Procedures.** Notice of the date, time, and place of the hearing, including a general explanation of the matter to be considered and a general description of the area affected, shall be given at least fifteen (15) days before the hearing, in the following manner:
1. The notice shall be published at least once in a newspaper of general circulation published or circulated in the Town of Cave Creek or, if there is none, notice shall be posted on the affected property in such a manner as to be legible from the public rights-of-way. A posted notice shall be printed so that the following are visible from a distance of one hundred (100) feet, the word "zoning," the present zoning district classification, the proposed zoning district classification where applicable, and the date and time of the public hearing. In addition to notice by publication, the Town may give notice of the hearing in such other manner as it may deem necessary or desirable.
 2. In proceedings involving rezoning of land which abuts other municipalities or unincorporated areas of the county, copies of the notice of public hearing shall be transmitted to the planning agency of each governmental unit abutting such land.
 3. In proceedings for rezoning that are not initiated by the property owner and which may change the zoning classification, notice by first class mail shall be sent to each real property owner, as shown on the last assessment of the property, of the area to be rezoned and to all property owners, as shown on the last assessment of the property, within three hundred (300) feet of the property to be rezoned.

4. The Town shall provide notice to real property owners pursuant to at least one of the following notification procedures:
 - a. Notice shall be sent by first class mail to each real property owner, as shown on the last assessment, whose real property is directly governed by the proposed changes.
 - b. If the Town issues utility bills or other mass mailings that periodically include notices or other informational or advertising materials, the Town shall include notice of such changes with such utility bills or other mailings.
 - c. The Town shall publish such changes prior to the first hearing on such changes in a newspaper of general circulation in the Town. The changes shall be published in a "display ad" covering not less than one-eighth (1/8) of a full page.
5. Responsibility for Providing Notice: The Town shall post notice as required and the applicant shall be required to maintain posting and remove the posting within ten (10) days after the hearing and final action. If notice is required to be provided by mail, the applicant shall be responsible for providing the Town with mailing labels containing the names and addresses of all property owners within three hundred (300) feet of the proposed request. Failure to provide a complete list of mailing labels shall constitute an incomplete application. The Town shall be responsible for the first-class mailing of the required notices.
6. If notice is provided pursuant to subparagraphs 4(b) or 4(c) of this subsection, the Town shall also send notice by first class mail to persons who register their names and addresses with the Town as being interested in receiving such notice. The Town may charge the recipient a fee not to exceed five (5) dollars per year for providing this service and may adopt procedures to implement this provision.
7. Notwithstanding the notice requirements set forth in paragraph 4 of this section, the failure of any person or entity to receive notice shall not constitute grounds for any court to invalidate the actions of the Town for which the notice was given.

SEC. 3.2 SITE PLAN REVIEW.

- A. Purpose:** The purpose of the site plan regulations is to promote the safe, functional and aesthetic development of property and to ensure that new structures, utilities, streets, parking, circulation systems, lighting, signage, landscaping, yards and open spaces are developed in conformance with the standards of this Ordinance, and the General Plan. Site plan review shall consider the proposed development and the relationship of the project to adjacent developments, the surrounding neighborhood, and the community. Site plan review for single-family residences shall be administratively approved at the time of building permit submittal.
- B. Application:**
1. Site Plan Review shall be required for development and construction of multi-family residences and commercial uses and for all development located within the "Town Core Overlay Area", except interior tenant improvements. If the proposed development requires a zoning change (rezoning), the site plan shall be submitted and considered concurrently with the rezoning application. For proposed developments which do not require rezoning, the site plan shall be approved prior to any construction or development.
 2. Before the Town accepts any applications, the applicant shall schedule a pre-application meeting. The purpose of the pre-application meeting is to discuss, in general, the procedures and requirements for the site plan review pursuant to these regulations. Following the pre-application meeting, the application shall be filed on a form provided by the Town and shall be accompanied by the required fee and all materials required by this Ordinance and/or on the application. Additional materials may be required by the Town in order to adequately review the application.
- C. Submittal Requirements:** All site plan applications shall include, at a minimum, the following information:
1. A map showing the particular property or properties for which site plan approval is requested, and the adjacent properties, buildings and structures, land uses, and public streets and ways within a radius of three hundred (300) feet of the exterior boundaries thereof.

2. A preliminary development plan which, at a minimum, shall include the following:
 - a. A site plan drawn to scale and in such a manner as to indicate clearly and precisely what is planned for the subject property. Lot dimensions and topography showing existing and proposed grades and drainage systems, natural and manmade features and indicating which will be retained and which are to be altered or removed.
 - b. All existing and proposed buildings and structures.
 - c. Proposed block layout, street system, street dedications, improvements and utility plans.
 - d. Proposed reservation for parks, parkways, playgrounds, recreation areas, pedestrian access and other open space.
 - e. Off-street parking facilities including number of spaces and dimensions of parking area, loading bays and service access drives.
 - f. Proposed landscaping, including the native vegetation that will be salvaged, walls and fences, outdoor lighting, signs, and outdoor storage and activities.
3. Additional information and material, including but not limited to the submission of special studies, may be required by the Town where necessary to adequately review the request.

D. Procedures:

1. The applicant shall schedule a pre-application conference with the Zoning Administrator to discuss the proposal.
2. Following the pre-application conference, the applicant shall submit a completed application, the required fees, and all materials and studies related to the site plan.
3. When the Zoning Administrator has determined that the application package is complete and all necessary information has been submitted, the application will be forwarded to the appropriate reviewing agencies and Town Departments for comments, and a public hearing will be scheduled.

4. The applicant shall be responsible for providing the Town with mailing labels containing the names and addresses of all property owners within three hundred (300) feet of the parcel which is the subject of the site plan review.
5. The site plan shall be reviewed by the Commission and the Council as set forth in Section 3.0 of this Ordinance.
6. Notification of public hearings shall be provided as set forth in A.R.S. §9-462(*et seq*) and Sec 3.1 of this Ordinance.
7. When a site plan is accompanied by an application for a special use permit, both applications may be processed and reviewed concurrently.

E. Review Criteria: Site plan review focuses on the layout of proposed developments, including building placement, setbacks, access, parking areas, lighting, external storage areas, open areas and landscaping. Site plan approval may be granted if the reviewing body finds that the applicant has met the following criteria:

1. Public facilities can accommodate the proposed development.
2. Special features of the site such as topography, vegetation, wildlife habitat, archaeological sites, historic sites, etc., have been adequately considered, analyzed, and protected.
3. The design and operating characteristics of the proposed development are reasonably compatible with surrounding development and land uses, and negative impacts have been sufficiently minimized.
4. Parking areas and entrance/exit points have been designed to facilitate traffic and pedestrian safety and avoid congestion.
5. Parking areas will:
 - (a) Minimize the amount of paved surface;
 - (b) Screen residential uses from vehicle headlights;
 - (c) Soften the impact of parking areas on adjacent public and private spaces through landscaping and screening;
 - (d) Promote energy conservation through vegetation to shade and cool parking areas.
6. On-site lighting is designed so that light is reflected away from adjoining properties and streets.

7. Undesirable impacts produced on the site, such as noise, glare, odors, dust or vibrations are adequately screened from adjacent properties.
8. The site will be protected from undesirable impacts which are generated on abutting properties where possible.
9. Unsightly exterior improvements and features such as trash receptacles, exterior vents and mechanical devices will be adequately screened.
10. Storage areas, trash collection facilities and noise generating equipment will be located away from abutting residential districts or development, or site obscuring fencing will be provided.

F. Scope of Action:

1. Approval by the Council shall become effective immediately.
2. The approval of any site plan shall become void within one (1) year (or other period of time as specified at the time of approval) of the date of approval if not exercised. Site plan approval shall be considered exercised when the use has been established or when a building permit has been issued.
3. A site plan approval pursuant to these provisions shall run with the land and shall continue to be valid upon a change of ownership of the site or structure that was the subject of the application.
4. After approval of a site plan by the Council, modifications to the site plan may be approved by the Zoning Administrator, when it is determined that the modifications are minor, such as minor dimensional changes and building configurations.
5. Major modification to a previously-approved site plan, such as changes in uses or densities, encroachments into required yards, or other major changes, shall be reviewed and approved by the Commission and Council following the procedure described in this section for the original Site Plan Review.
6. A "Certificate of Occupancy" shall not be issued if the development does not conform to the approved site plan.

SEC. 3.3 VARIANCES and APPEALS.

- A. Purpose:** The Board may decide appeals from the decisions of the Zoning Administrator and grant variances from the terms of the Zoning regulations that meet the criteria set forth in this Ordinance. Variances as to permitted uses are not allowed.
- B. Application:** Before the Town accepts any applications, the petitioner shall schedule a pre-application meeting. The purpose of the pre-application meeting is to discuss, in general, the procedures and requirements for the variance or appeal. Following the pre-application meeting, a request for variance shall be made by filing an application with the Zoning Administrator and paying the required application fee. The application shall be accompanied by a development plan showing such information as the Zoning Administrator may reasonably require for purposes of this Ordinance. In all cases, the application shall address the evaluation criteria set forth in Section C of this chapter. An applicant may appeal a Zoning Administrator's determination. The appeal shall be filed on a Zoning Administrator's Determination-Appeal form available at the Planning Department.
- C. Evaluation Criteria:**
1. Appeals from Decisions of the Zoning Administration. The Board is authorized 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 or interpretation of this Ordinance. The Board's review is limited to determining whether the decision or interpretation was in accordance with the intent and requirements 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.

2. Variances.

- a. The Board is authorized 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 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.

The granting of the adjustment may not be materially detrimental to persons residing or working in the vicinity, to adjacent property, or to the neighborhood or the public welfare.

- b. Variance Requests. A variance is not a right. It may be granted to an applicant only if the applicant establishes compliance with the hardship criteria established in A.R.S. §9-462 (*et seq*) and in Sec. 3.3C of this Ordinance. The Board of Adjustment may not:
- i. 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.
- ii. Grant a variance if the special circumstances applicable to the property are self-imposed by the property owner

D. Procedures:

Public Meetings: Notice of the meeting at which the variance or appeal will be heard, shall be provided in compliance with A.R.S. §9-462 *et seq*. In all cases the notice shall be posted in a conspicuous place on the affected property.

- E. Validity Limit:** Rights and privileges established by the granting of a variance shall be exercised within twelve (12) months following the date of approval unless the Board specifies a different time limit at the time the variance is granted. A variance that is not exercised within the time limits specified is null and void.
- F. Appeals of Board of Adjustment Decision:** A person aggrieved by a decision of the Board or an officer or department of the Town of Cave Creek affected by a decision of the Board may at any time within thirty (30) days after the Board has rendered its decision, file a complaint for special action in Superior Court to review the Board's decision.
- G. Stay of Proceedings:** An appeal to the Board 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.

SEC. 3.4 ZONING TEXT AMENDMENT and ZONING MAP CHANGES.

- A. Purpose:** In accordance with the provisions of Arizona State Law, the Council may from time to time adopt text amendments to this Ordinance and/or amend the Official Zoning Map(s).
- B. Application:**
 - 1. Applicant. Any person, town staff, Commission, or Council may request an amendment to the text of the Zoning Ordinance. Only the property owner, Commission, or Council may initiate an amendment to the Zoning Map.
 - 2. Pre-application Meeting. Before the Town accepts any applications, the applicant other than the Council, Commission, or Town staff shall schedule a pre-application meeting. The purpose of the pre-application meeting is to discuss, in general, the procedures and requirements for the zoning text amendment or zoning map change (rezoning) pursuant to these regulations. Following the pre-application meeting, the application shall be filed on a form provided by the Town and shall be accompanied by the applicable fees and supporting documentation required by this Ordinance and/or on the application form. Additional materials or studies may be required by the Town in order to adequately review the application.

- C. Initiation of Ordinance Text Amendment:** The application must include the exact section of this Ordinance proposed for amendment, the proposed substitute wording, and the reasons for requesting the amendment. Graphic material should also be submitted if it will assist in understanding the benefits of the amendment.
- D. Initiation of a Rezoning:** An owner of real property within the Town, or that owner's authorized representative, may, upon proof of ownership, apply for a change in zoning district boundaries (rezoning) for that landowner's property. The Town staff, the Commission and the Council also may initiate such amendments. If a rezoning application filed by a party other than the Commission or Council includes property not owned by the applicant, the application shall include the signatures of the real property owners representing at least seventy-five (75%) percent of the land in the area proposed to be changed.
- E. Submittal Requirements:** As a prerequisite to the Commission hearing for any rezoning, a neighborhood meeting shall be conducted by the applicant. (A neighborhood meeting is not required for Conditional Use Permit or Site Plan Review). The purpose of the meeting is to provide information to the adjacent property owners and residents and to allow the neighbors and residents to express any issues or concerns that they may have with the proposed rezoning before the public hearing is conducted. The applicant shall provide notice of the meeting to all landowners within three hundred (300) feet of the boundaries of the proposed development, the Town, and any Neighborhood Associations on record with the Town, by first class mail no less than thirty (30) days prior to the scheduled Commission meeting. The applicant shall submit a list of the attendees and minutes of the meeting(s) to the Town Planning Department. All meeting(s) shall be held within the Town of Cave Creek corporate limits.

All zoning text amendments and zoning change applications shall comply with the submittal requirements outlined in Sec. 3.2C of this Ordinance, and those on the application form.

- F. Procedures:** All zoning text amendments and zoning change applications shall be processed in accordance with Sec. 3.2D of this Ordinance.
1. Approval of a petition to rezone land may not be enacted as an emergency measure and the rezoning shall not become effective for at least thirty (30) days after Council approval.

2. If the proposed rezoning is inconsistent with the General Plan – General Land Use Plan, an application for an amendment to the General Land Use Plan shall be submitted by the applicant in accordance with A.R.S. § 9-461 (*et seq*) and Sec. 3.5 of this Ordinance.
- G. Protest:** If a protest is filed in accordance with the requirements of A.R.S. §9-462.04 H, as amended, the amendment shall not pass, unless approved by a vote of three-fourths (3/4) of the Council. The protest petition shall be filed in writing with the Town Clerk at or before noon on the date of the Council hearing.
- H. Subsequent Applications:** In the event that an application for amendment is denied by the Council or that the application is withdrawn after the Commission hearing, the Commission shall not accept another application for the same amendment within one year of the original hearing unless authorized by a vote of three-fourths ($\frac{3}{4}$) of the Commission.
- I. Citizens review process:** In proceedings involving one or more of the following proposed changes or related series of changes in the standards governing land uses, notice shall be provided in the manner prescribed in subsection J of this section:
1. A ten percent (10%) or more increase or decrease in the number of square feet or units that may be developed.
 2. A ten percent (10%) or more increase or reduction in the allowable height of buildings.
 3. An increase or reduction in the allowable number of stories of buildings.
 4. A ten percent (10%) or more increase or decrease in setback or open space requirements.
 5. An increase or reduction in permitted uses.

- J.** In proceedings governed by subsection I of this section, the municipality shall provide notice to real property owners pursuant to at least one of the following notification procedures:
1. Notice shall be sent by first class mail to each real property owner, as shown on the last assessment, whose real property is directly governed by changes.
 2. If the town issues utility bills or other mass mailings that periodically include notices of other informational or advertising materials, the municipality shall include notice of such changes with such utility bills or other mailings.
 3. The town shall publish such changes prior to the first hearing on such changes in a newspaper of general circulation in the town. The changes shall be published in a “display ad” covering not less than one-eighth (1/8) of a full page.
- K.** If notice is provided pursuant to items 2 or 3 of subsection J, the municipality shall also send notice by first class mail to persons who register their names and addresses with the municipality as being interested in receiving such notice. The municipality may charge a fee not to exceed five (\$5.00) dollars per year for providing this service and may adopt procedures to implement this provision.
- L.** Notwithstanding the notice requirements set forth in subsection I of this section, the failure on any person or entity to receive notice shall not constitute ground for any court to invalidate the actions of a municipality for which the notice was given.

SEC. 3.5 GENERAL PLAN AMENDMENT.

A. Application:

1. In accordance with the provisions of Arizona State Law, the Council may update and amend the General Plan. Such amendments or changes may be initiated by the Council, Commission, Town Staff or by a property owner or his/her designated representative. By resolution, the Council may establish a schedule prescribing when and how frequently General Plan Amendments will be considered.
2. Before any applications are accepted by the Town, the applicant shall schedule a pre-application meeting. The purpose of the pre-application meeting is to discuss, in general, the procedures and requirements for the General Plan Amendment pursuant to these regulations and the General Plan. All applications shall be filed on a form provided by the Town and shall be accompanied by the required fee and all materials required by this Ordinance and/or on the application form. Additional materials may be required by the Town in order to adequately review the application.

B. Procedures: An application for a General Plan Amendment shall be processed and public hearings shall be held in accordance with the requirements of State law.

C. Approval Criteria: In determining whether the proposed amendment shall be approved, the Commission and Council shall consider the following factors:

1. The development pattern contained in the land use plan does not adequately provide appropriate optional sites for the use proposed in the amendment.
2. That the amendment constitutes an overall improvement to the Town of Cave Creek General Plan and is not solely for the good or benefit of a particular landowner or owners at a particular point in time.

3. That the amendment will not adversely impact the community as a whole or a portion of the community by:
 - a. Significantly altering acceptable existing land use patterns.
 - b. Adversely impacting existing uses due to increased traffic on existing systems.
 - c. Affecting the livability of the area or the health and safety of the residents.
4. That the amendment is consistent with the overall intent of the General Plan.
5. Whether events subsequent to the General Plan adoption have changed the character and/or condition of the area so as to make the application acceptable.