SECTION 26-IX-1 Creation.

(A) The City hereby creates the Board of Adjustments of seven (7) members to be appointed by the Mayor, with the advice and consent of the Cedar City Council. Each member shall serve for a period of four (4) years. For members serving when this ordinance was passed their terms shall be adjusted to expire on the 30th day of June in the same calendar year in which they are currently set to expire. This shall not apply to the member of the Board of Adjustments that is serving as a member of the Planning Commission, whose term on the Board of Adjustments shall expire at the same time his term on the Planning Commission expires. One member of the Planning Commission shall be a member of the Board of Adjustments. Any vacancy occurring on said board shall be promptly filled by the Mayor, with the advice and consent of the City Council, for the unexpired portion of such term.

(B) The Mayor may remove members of the Board of Adjustments for the following reasons, to wit:

   (1) Misconduct including, but not limited to, commission of a criminal act other than minor traffic violations, and;
   (2) Excessive absenteeism including, but not limited to, missing three (3) consecutive meetings.

(C) The Board of Adjustments shall organize and elect a Chairman. The chairman shall conduct the meetings and be a voting member. The Board shall conduct meetings on the first Monday of each month or as otherwise called by the Chairman. All meetings shall be conducted in accordance with the provisions of the State of Utah Open and Public Meetings Act. All members of the board shall follow the State of Utah Public Employees Ethics Act.

(D) A simple majority of the voting members shall constitute a quorum to conduct business. The Chairman shall conduct the meetings pursuant to Robert’s Rules of Order. In applying Robert’s Rules of Order the Chairman is encouraged to reject overly formal applications, and adopt the application that favors the following goals: (1) allow the
Chairman the ability to facilitate or direct the discussion and keep order; (2) protect the ability of all board members to bring up their ideas, discuss them, receive input from the public and staff, and come to their individual opinions and conclusions on each issue; (3) allow all members the opportunity to express their individual opinions and conclusions on each issue through their vote; and (4) assure the majority vote of the board is the opinion of the board while at the same time protecting the minority of board members ability to speak, express ideas, and vote. In addition, the Chair shall conduct the meetings so as to allow the party requesting relief from the Board of Adjustments a reasonable opportunity to present evidence and elicit testimony from witnesses.

(E) Cedar City shall assign such staff to the board of adjustments that is necessary and proper. City Staff shall provide training for new members upon their appointment.

SECTION 26-IX-2 Powers of the Board of Adjustments.

(A) The Board of Adjustments shall hear and decide:

(1) Appeal from administrative decisions applying a zoning or subdivision ordinance, including appeals from:

(a) building permit denials based upon a failure to comply with zoning or subdivision ordinance; and

(b) administrative decision relating to subdivision plats;

(2) Special exceptions to the terms of the Zoning Ordinance;

(3) Variances from terms of zoning ordinances; and

(4) Appeals from decisions approving or denying a conditional use permit.

(B) The Board of Adjustments may make determinations regarding the existence, expansion, or modification of non-conforming uses.

(C) The Board of Adjustments may interpret the zoning maps and pass upon disputed questions of lot lines, district boundary lines, or similar questions as they arise in the administration of the zoning regulations.

SECTION 26-IX-3 Variances.

(A) In accordance with State law, the Board of Adjustments shall hear any person or entity desiring a waiver or modification of the requirements of zoning ordinance as applied to a parcel of property that he owns, leases, or in which he holds some beneficial interest, the Board of Adjustments may grant a variance from the terms of the zoning ordinance if:
(1) Literal enforcement of the zoning ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the zoning ordinance;

(2) There are special circumstances attached to the property that do not generally apply to other properties in the same district;

(3) Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same district;

(4) The variance will not substantially effect the general plan and will not be contrary to the public interest; and

(5) The spirit of the zoning ordinance is observed and substantial justice is done.

(B) In determining whether or not enforcement of the zoning ordinance would cause unreasonable hardship, the Board of Adjustments may not find an unreasonable hardship unless the alleged hardship (a) is located on or associated on the property for which the variance is sought; and (b) comes from circumstances peculiar to the property, not from conditions that are general, to the neighborhood.

(C) In determining whether or not enforcement of the zoning ordinance would cause unreasonable hardship, the Board of Adjustments may not find an unreasonable hardship if the hardship is self-imposed or economic.

(D) In determining whether or not there are special circumstances attached to the property, the Board of Adjustments may find that special circumstances exist only if the special circumstances:

(1) Relate to the hardship complained of; and

(2) Deprive the property of privileges granted to other properties in the same district.

(E) The applicant shall bear the burden of approving that all conditions justifying a variance have been met.

(F) All variances run with the land.

(G) The Board of Adjustments, and any other body, may not grant use variances.

(H) In granting a variance, the Board of Adjustments may impose additional requirements on the applicant that will:

(1) Mitigate the harmful effects of the variance; or
(2) Serve the purpose of the standard or requirement that is waived or modified.

SECTION 26-IX-4 Special Exceptions.

To hear and decide requests for special exceptions or other special requests upon which such board is authorized to pass as herein set forth; provided, however, that the board shall not act upon matters which have not been specifically delegated to it by the terms of this chapter. Every decision of the Board of Adjustments shall be based upon findings of fact, and every fact and every finding of fact shall be supported in the record of the proceedings of the Board. The special exceptions or other special requests on which the Board of Adjustments shall be authorized to pass are:

(A) To permit the building of a dwelling upon a lot which does not have frontage on a street, if an adequate easement is provided,

(B) To interpret the zone map,

(C) To reduce the amount of off-street parking required where sufficient off-street parking is not readily available within the vicinity, and/or where acquisition of land for such use would cause exceptional hardships. Also to decide the number of off-street parking spaces which shall be required when the number is not specifically set forth in this ordinance.

(D) The board of Adjustments may permit buildings to be constructed within seventy-five (75) feet from a natural flood channel, provided measures are taken which will adequately protect the buildings or structures from damage due to floods, will not increase the hazard of flood damage to surrounding lands and buildings, and will be located in accordance with the plan of flood drainage as approved by the City Council.

(1) Such use is similar in character and nature to the uses permitted in the zone.

(2) Such use conforms to the basic characteristics of the zone in which it is added and is in harmony with the objectives and purposes of the zone.

(3) Such use is not likely to create any more traffic, or be more offensive due to noise, heat, dust, smoke, odor, glare, vibration or other objectionable influence than the minimum amount normally resulting from the other uses listed in the zone in which it is added. When any use has been added to any zone in accordance with this procedure, such use shall thereafter be deemed to be a permitted use within that zone.
Grant Home Occupations. The Board of Adjustments may grant home occupations in the R1, R-2 (Dwelling, Single Unit), R-2 (Dwelling, Two Unit), R-3 (Dwelling, Single Unit), R-3 (Dwelling, Multiple Unit), and RE zones provided:

(1) The home occupation is conducted entirely within a dwelling and is carried on by members of the family residing in the dwelling. Employees other than family members residing in the dwelling are permitted as long as the following conditions are complied with: (a) the total number of full time and part time employees, including those residing in the home, shall not exceed 1 employee for every one hundred and fifty (150) square feet of area devoted to the home occupation, as per 26-IX-4(E)(6) and in no event exceed a maximum of five (5) outside employees; and (b) provide off street parking as required by 26-IX-4(E)(9).

(2) The home occupation does not involve the use of any accessory buildings or yard space for storage or activities outside of the dwelling not normally associated with residential use, except for Nursery Schools, in which case it is presumed that rear yard space is utilized and the rear yard space must be completely fenced with at least a six-foot (6') high fence.

(3) No commercial vehicles are used except one delivery truck which does not exceed one (1) ton capacity.

(4) The home occupation does not include a drive through.

(5) The home occupation is clearly incidental and secondary to the use of the dwelling for dwelling purposes and does not change the character of the building from that of a dwelling.

(6) Signs shall be limited to one non-flashing non-illuminated sign not larger in area than six (6) square feet. Said sign must be located at least ten feet (10') behind the sidewalk, and comply with the provisions of 26-IV-3, clear view of intersecting streets. The top of a freestanding sign not attached to the residence shall not be more than four (4) feet from ground level.

(7) Not more than the equivalent of twenty-five percent (25%) of the ground floor area of the dwelling is devoted to the home occupation. Nursery schools and daycare centers may use up to twenty-five percent (25%) of the ground floor area and one other floor of the home. Nursery schools and daycare centers need not designate a particular twenty-five percent (25%) of the two-floor area; however, the actual 25% of the two-floor area shall be utilized to calculate the maximum number of children allowed in the dwelling pursuant to Section 26-IX(E)(11)(b). Ground floor area is defined as the square footage computed in the outside measurements of the dwelling portion of the home on the ground floor level. Basement or
basement level floor space shall not be used in computing ground floor area.

(8) The home occupation shall apply for and receive and maintain a Cedar City business license.

(9) In the opinion of the Board of Adjustments, the activities in connection with the home occupation are not contrary to the objectives and characteristics of the zone in which the home occupation is located.

(10) Off-street parking will be provided. Except as provided under Section 26-IX(E)(14), the amount of off street parking shall depend on the type of home occupation being requested and shall meet the requirements of Chapter 26, Section V, required parking. When applying the parking requirements from Chapter 26, Section V, the required parking for the home occupation shall be in addition to the required parking for the entire residential use of the property. The applicant shall submit to the City’s building and zoning official a site plan showing how the parking will be accommodated on the lot at least five (5) days prior to the board of adjustment meeting.

(11) In addition to the above requirements, home occupations for Nursery Schools may be granted by the Board of Adjustments provided that the proposed Nursery School has:

a. A maximum of sixteen children at any one time, including the occupant’s own children;

b. That the portion of the dwelling used for the Nursery School contains floor space of at least thirty-five (35) square foot per child and alternate door exits.

(12) Before conducting a hearing on a home occupation request the Building Inspector shall have conducted an on-site inspection and shall make a report of his findings to the Board of Adjustments.

(13) Notice by the applicant shall be given to all property owners of record within a 300-foot radius from the boundary of the proposed home occupation. Said notice shall be sent certified mail or hand-delivered to the property owners in accordance with the most current Iron County Assessment Roll no later than five (5) days before the board of adjustments meeting. Proof of the certified mail and/or a certificate documenting hand delivery to property owners as required herein shall be delivered to the City Building Official prior to the board of adjustments meeting.
(14) For temporary home occupations obtaining a transitional license under Section 23-14(D)(3), the Board of Adjustments may exempt, in full or in part, the applicant from the business portion of the parking requirements under Section 26-IX-4(E)(10) if, in the opinion of the Board of Adjustments, the exemption will not create a safety hazard.

(15) The applicant certifies that the home occupation will not violate any CC&R’s that regulate the dwelling.

Amended by Cedar City Ordinance No. 0416-14,1114-18-4, 0213-19 and 0810-22-14.

SECTION 26-IX-5 Other Powers and Duties.

(A) Conditions. The Board of Adjustments may attach reasonable conditions or requirements to the granting of a variance or exception which the petitioner must comply with as a condition of the granting or approval and may attached a time limit on the exercise or non-exercise of any grant.

(B) In performing the duties and powers as set forth herein, the Board of Adjustments is hereby empowered to reverse or affirm wholly or partly or modify the order, requirement, decision, or determination of the enforcing officer and may make such order or requirement as ought to be made; provided, however, that in interpreting and applying the provisions of this ordinance, the requirements contained herein shall be deemed to be the minimum requirements for the purposes set forth.

(C) Authority Limited. The powers and duties of the Board of Adjustments are limited to administrative matters as herein set forth in this chapter. It shall not be the function of the Board of Adjustments to amend this ordinance or to correct what it may consider to be an unwise requirement. Nevertheless, the Board of Adjustments shall have administrative duties as set forth in this ordinance and within the limitations and intent of the provisions of this ordinance shall perform its duties and shall have the power to perform those acts as herein set forth and such administrative actions shall not be interpreted as unauthorized amendments to this ordinance.

SECTION 26-IX-6 Vote.

A simple majority of the voting members shall constitute a quorum to conduct business. The concurring vote of a simple majority of the members present will be necessary to decide any matter upon which is required to pass.

SECTION 26-IX-7 Procedure.
Upon receipt of the APPLICATION TO APPEAR BEFORE THE BOARD OF ADJUSTMENTS, the Building Inspector shall forthwith transmit to the Board of Adjustments all papers constituting the record upon which the action appealed from was taken. The Board of Adjustments shall review the application and shall return the same to the Building Inspector with its recommendations pertaining thereto within thirty (30) days. Failure to return said application within thirty (30) days shall constitute approval. An appeal stays all proceedings in furtherance of the action appealed from unless the Building Inspector certifies to the Board of Adjustments after the notice of appeal shall have been filed with him that by reason of facts stated in the certificate a stay would in his opinion cause imminent peril to life or property. In such case, proceedings shall not be stayed otherwise than by restraining order which may be granted by the Board of Adjustments or by the District Court on application and notice to the Building Inspector and on due cause shown.

The Board of Adjustments shall fix a reasonable time for the hearing of the appeal, give public notice thereof by publication of notice at least five (5) days prior to the date of the hearing, as well as due notice to the parties in interest and decide the same within a reasonable time. Upon the hearing any party may appear in person or by agent or by attorney.

SECTION 26-IX-8 Recourse from Decisions of Board.

Any person aggrieved by any decision of the Board of Adjustments may have and maintain a plenary action for relief therefrom in any court of competent jurisdiction provided that petition for such relief is presented to the court within thirty (30) days after the filing of such decision in the Office of the Board of Adjustments.

Amended by Cedar City Ordinance No. 0612-13-2