

TOQUERVILLE CITY
ORDINANCE 2018.05



AN ORDINANCE REVISING AND RESTATING IN ITS ENTIRETY SECTION 2, CHAPTER 3, TITLE 10 OF THE TOQUERVILLE CITY CODE TO REORGANIZE AND RE-NAME THE TOQUERVILLE BOARD OF ADJUSTMENT TO A SINGLE MEMBER PANEL KNOWN AS THE TOQUERVILLE APPEAL AUTHORITY

RECITALS

WHEREAS, pursuant to the Utah Constitution and the partial delegation of the State's police powers to municipalities and counties to regulate land use and development of land within its boundaries, the Utah State Legislature adopted Chapter 9a of Title 10 (Municipal Code), known as the Utah Land Use Development & Management Act – "LUDMA" in 2005.

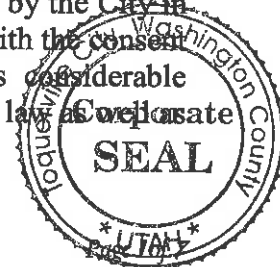
WHEREAS, pursuant to LUDMA, a municipality has been required to have at least one separate body (other than its governing body) to act as an "appeal authority" to hear appeals on various types of land use decisions or staff interpretations/applications of a City's land use ordinances as well as property owners' applications for variances.

WHEREAS, in compliance with the requirements of LUDMA, Toquerville City ("City") has maintained a body of appointed officials known as the Toquerville Board of Adjustments ("B of A") and the Toquerville City Council ("City Council") has designated the B of A as its "appeal authority" on all types of land use related appeals from decisions made by the City Council and Toquerville Planning Commission as well as the appeal authority for purposes of hearing and determining whether or not to grant variances for structures and parcels not in conformance with Title 10 of the Toquerville City Code (Land Use Regulations).

WHEREAS, in recent years the Utah State Legislatures have made changes to LUDMA to clarify that a municipality's "appeal authority" need not consist of any certain number of members but that the size and the internal operation of an appeal authority is left to the discretion of each municipality, except in certain instances.

WHEREAS, the City Council has determined that because of the size of the City, the low number of variance applications and appeals, and the fact that Section 2, Chapter 3 of Title 10 of the Toquerville City Code requires the City Council to appoint regular members and two alternates to the B of A, it is not in the City and its residents' best interest to maintain such a large appeal authority and to keep them trained on the proper procedures, protocol and criteria prescribed LUDMA and Title 10 of the Toquerville City Code.

WHEREAS, the City Council has determined that it would be more cost effective and that a higher level of expertise, experience and professionalism could be obtained by the City in all land use appeals and variance requests that may come before it, if the Mayor, with the consent of the City Council were to appoint a single individual, who preferably has considerable experience and training in Utah municipal law and particularly municipal land use law as



Utah administrative law, Utah’s Rules of Civil Procedure, Evidence, and Appellate Procedure who could hear appeals and various request and render decisions thereon in a very well-reasoned and articulated manner.

WHEREAS accordingly, the City Council has determine that in order to implement and authorize a one person, law-trained “Appeal Authority”, that Section 2, Chapter 3 of Title 10 of the Toquerville City Code must be amended significantly.

ORDINANCE

NOW THEREFORE BE IT ORDAINED BY THE TOQUERVILLE CITY COUNCIL, based upon the recitals set forth above, that:

1. Amended & Restated Section 2, Chapter 3, Title 10 of the Toquerville City Code: Section 2, Chapter 3, Title 10 of the Toquerville City Code is hereby amended and restated in its entirety as follows:

10-3-2: APPEAL AUTHORITY

A. DEFINITIONS.

“Appeal Authority” means the person appointed by the Mayor with the advice and consent of council to hear appeals from person(s) who have been affected by the implementation of the Land Use Ordinances.

“Land Use Authority” means anyone who has the authority to interpret or implement the City’s Land Use Ordinance and for purposes of this Section shall be the Toquerville City Council except for in those instances with the Land Use Ordinance the City Council has delegated a specific power to the Toquerville Planning Commission or an appointed official of the City, in which cases that body or person shall be the Land Use Authority.

“Land Use Ordinance” is defined in Title 10, Chapter 9a of the Utah Code and for purposes of this Section shall be Title 10 of the Toquerville City Code.

B. APPOINTMENT.

There is hereby created an Appeal Authority to be appointed by the Mayor with the advice and consent of the City Council. It is the intent of the City that the appointed individual will not personally benefit from decisions associated with the interpretation of the ordinances of the City.

C. TERM.

The Appeal Authority shall serve for a term of two (2) years. Notwithstanding the preceding, the term of office of the initial Appeal Authority shall run from the date of appointment until December 31, 2020. Thereafter all subsequent terms shall



commence on January 1st of every other year or until the Appeal Authority position is vacant on account of death, resignation, removal or disqualification. In the event of early vacancy, the position of Appeal Authority shall be filled in the same manner as an original appointment for the expired term.

D. REMOVAL.

The appointed Appeal Authority may be removed for cause by the City Council upon written charges, which shall be filed with the Mayor, and after public hearing, if such public hearing is requested by the appointed Appeal Authority.

E. DUTIES AND POWERS.

- 1. The Appeal Authority shall have the following powers and duties:
 - a. To act in a quasi-judicial manner;*
 - b. Hear and decide requests for "variances" as that term is defined in Utah Code Ann. §10-9a-702;*
 - c. Hear and decide appeals of the Land Use Authority's administrative decisions applying the Land Use Ordinance.*
 - d. Serve as the final arbiter of issues involving the interpretation or the application of Land Use Ordinances.*
 - e. Hear and decide appeals from a fee charged in accordance with section 10-9a-510 of the Utah Code.**
- 2. The Appeal Authority may not entertain an appeal of a matter in which the Appeal Authority, or any participating member, had first acted as the Land Use Authority.*

F. APPEALS TO THE APPEAL AUTHORITY.

- 1. As a condition precedent to judicial review, each adversely affected person may specifically challenge a Land Use Authority's decision, within fifteen (15) days of the land use decision and pay the related fee as may be set by the City Council, amended from time to time, and designated in the City's Uniform Fee Schedule.*
- 2. The Appeal Authority shall determine the correctness of a decision of the Land Use Authority in its interpretation and application of a Land Use Ordinance.*



3. *Only those decisions in which a Land Use Authority has applied a Land Use Ordinance to a particular application, person or parcel may be appealed to the Appeal Authority.*
4. *All documents and exhibits constituting the record upon which the action appealed was made shall be presented to the City Clerk with the application for hearing.*
5. *For every appeal, the applicant shall present to the Appeal Authority every theory of relief that it can raise in District Court.*
6. *The Appeal Authority shall conduct each appeal and variance hearing as described by this Section.*
7. *The person or entity who filed the appeal has the burden of proving that the Land Use Authority erred.*
8. *The Appeal Authority shall respect the due process rights of each of the participants in providing them with proper notice, right to be heard at a hearing and right to have legal counsel present and participate at said hearing if he/she/it so desires.*
9. *After the hearing, the Appeal Authority may give a preliminary decision, but shall issue a written decision within sixty (60) days after the hearing or after an applicant has submitted their appeal or variance request for decision and waiving their right to hearing in writing.*
10. *If an appeal of a land use decision is lodged with the City, the City Council may waive the requirements of Subsection F.1., above and allow the applicant to make their appeal directly to the 5th District Court, in and for Washington County, State of Utah.*

G. VARIANCES.

Any person or entity desiring a waiver or modification of the requirements of a Land Use Ordinance as applied to a parcel or property that he owns, leases, or in which he holds some other beneficial interest may apply to the Appeal Authority for a variance from the terms of the ordinance.

1. *The Appeal Authority may grant a variance only if:*
 - a. *The literal enforcement of the ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the Land Use Ordinances;*
 - b. *There are special circumstances attached to the property that do not generally apply to other properties in the same zoning district;*



- c. *Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zoning district;*
 - d. *The variance will not substantially affect the general plan and will not be contrary to the public interest; and*
 - e. *The spirit of the Land Use Ordinance is observed and substantial justice done.*
2. *In determining whether or not enforcement of the Land Use Ordinance would cause unreasonable hardship under Subsection G.1.a., the Appeal Authority may not find an unreasonable hardship unless the alleged hardship:*
 - a. *Is located on or associated with 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; or*
 - c. *The hardship is self-imposed or economic.*
 3. *In determining whether or not there are special circumstances attached to the property under Subsection G.1.b., the Appeal Authority may find that special circumstances exist only if the special circumstances:*
 - a. *Relate to the hardship complained of; and*
 - b. *Deprive the property of privileges granted to other properties in the same zoning district.*
 4. *The applicant shall bear the burden of proving that all of the conditions justifying a variance have been met.*
 5. *Variations run with the land.*
 6. *The Appeal Authority may not grant a use variance.*
 7. *In granting a variance, the Appeal Authority may impose additional requirements on the applicant that will:*
 - a. *Mitigate any harmful effects of the variance; or*
 - b. *Serve the purpose of the standard or requirement that is waived or modified.*



F. INTERPRETATION OF LAND USE ORDINANCE.

Any person alleging there was an error in any order, requirement, decision, or determination made by the Land Use Authority in the administration or interpretation of the Land Use Ordinance may request an interpretation and decision from the Appeal Authority in accordance with this Subsection F.

- 1. The Appeal Authority will grant a waiver to the decisions of the Land Use Authority only as follows:
 - a. If the decision or requirement by the Land Use Authority conflicts with the intent or literal interpretation of the Land Use Ordinances; or*
 - b. If the decision or requirement by the Land Use Authority conflicts with state or local laws.**
- 2. In some instances, the Appeal Authority may not fully understand the intent of an ordinance or requirement placed upon any person(s) by the Land Use Authority. Under these circumstances the Appeal Authority may obtain a decision from the City Council prior to making a final decision (if applicable).*
- 3. If the Appeal Authority requires an interpretation from the City Council, the Appeal Authority shall make a final decision within ten (10) days after that interpretation is given.*

G. DISTRICT COURT REVIEW OF APPEAL AUTHORITY DECISIONS.

Any person or entity adversely affected by any decision of the Appeal Authority may petition the District Court for a review of the decision.

- 1. In the petition for review, the petitioner may only allege that there was an error in any order, requirement, decision, or determination made by the Land Use Authority in the administration or interpretation of the Land Use Ordinance.*
- 2. The petition is barred unless it is filed within thirty (30) days after the Appeal Authority's decision becomes effective, which three (3) days after the written decision is issued by the Appeal Authority and mailed via first class mail to the applicant at the address designated in the application.*
- 3. The Appeal Authority shall transmit to the reviewing court the record of its proceedings including its minutes, findings, orders, and, if available, a true and correct transcript of its proceedings. If the proceeding was tape recorded, a transcript of that tape recording is a true and correct transcript for purposes of this subsection.*



4. *Review of the Appeal Authority's decision shall be done by the court in the manner and upon the standards provided by law.*
5. *The appellant has the burden of proving that the Appeal Authority erred.*
6. *No person or entity may challenge in District Court a land use decision of the City until that person or entity has exhausted their administrative remedies as provided in this Section or elsewhere in Title 10 of the Toquerville City Code.*

2. **Repealer.** This Ordinance supersedes or repeals the provisions of any ordinance, resolution that are inconsistent with the provisions of this Ordinance.

3. **Savings Clause.** If any provision or clause in this Ordinance or the application thereof to any person or entity or circumstance is held to be unconstitutional or otherwise invalid by any court of competent jurisdiction, such invalidity shall not affect other sections, provisions, clauses, or applications hereof which can be implemented without the invalid provision, clause, or application hereof, and to this end the provisions and clauses of this Ordinance are declared to be severable.

4. **Effective Date.** This Ordinance shall become effective immediately upon adoption by the Toquerville City Council.

PASSED AND APPROVED THIS 9th DAY OF AUGUST, 2018.

Paul Heideman	Aye <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>	Abstain <input type="checkbox"/>	Absent <input type="checkbox"/>
Keen Ellsworth	Aye <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>	Abstain <input type="checkbox"/>	Absent <input type="checkbox"/>
Justin Sip	Aye <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>	Abstain <input type="checkbox"/>	Absent <input type="checkbox"/>
Alex Chamberlain	Aye <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>	Abstain <input type="checkbox"/>	Absent <input type="checkbox"/>
Ty Bringhurst	Aye <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>	Abstain <input type="checkbox"/>	Absent <input type="checkbox"/>

TOQUERVILLE CITY
a Utah Municipal Corporation



Lynn Chamberlain, Mayor

Date 8-9-2018



Attest: Dana McKim, City Recorder

