

TOQUERVILLE CITY
ORDINANCE 2015.06

AN ORDINANCE AMENDING & RESTATING TITLE 10, CHAPTER 17 OF THE TOQUERVILLE CITY CODE TO LIMIT THE NUMBER OF GUESTS THAT MAY STAY IN BED AND BREAKFAST SERVICE ESTABLISHMENT AND TO PROHIBIT NIGHTLY OR SHORT TERM RENTAL OF RESIDENCES WITHIN THE CITY EXCEPT IN CERTAIN INSTANCES.

RECITALS

WHEREAS, Toquerville City, as municipal corporation and political subdivision of the State of Utah ("City"), has authority pursuant to its Constitutionally granted police powers, to protect the health, safety and general welfare of the residents of the City; and

WHEREAS, the establishment of zoning regulations governing the conducting a bed and breakfast service and the nightly or short term rental of residences within the City will promote the health, safety and general welfare of the City's residents by protecting the environment of the City, including use compatibility with existing residences, preserving the existing character and property values of the community by assuring appropriate uses, and promoting peace and safety within neighborhoods of the City.

ORDINANCE

NOW THEREFORE, BE IT HEREBY ORDAINED by the City Council of Toquerville City, State of Utah, that Title 10, Chapter 17 of the Toquerville City Code be amended and restated follows:

CHAPTER 17

SUPPLEMENTAL USE REGULATIONS

SECTION:

- 10-17-1: NONPERMITTED USES:***
- 10-17-2: RESIDENTIAL FACILITIES FOR PERSONS WITH DISABILITY:***
- 10-17-3: BED AND BREAKFAST SERVICES:***
- 10-17-4: NIGHTLY OR SHORT TERM RENTALS:***

10-17-1: NONPERMITTED USES: *Throughout this title, any use which is neither a permitted use or a conditional use shall be considered a "nonpermitted use".*

10-17-2: RESIDENTIAL FACILITIES FOR PERSONS WITH DISABILITY: *The planning and zoning administrator, in connection with the building official, shall grant a building and occupancy permit for the establishment of a residential facility for persons with a disability in a zone in which residential uses are permitted, if the applicant certifies as follows:*

- A. *Compliance with Utah Code Annotated title 57, chapter 21, the Utah Fair Housing Act, and the Federal Fair Housing Amendments Act of 1988, 42 USC section 3601 et seq.*
- B. *To the extent required by Federal law, provide that a residential facility for persons with a disability is a permitted use in any zone where similar residential dwellings that are not residential facilities for persons with a disability are allowed.*
- C. *Subject to subsection B of this section, the City requires that:*
 - 1. *Residential facilities for persons with a disability:*
 - a. *To be reasonably dispersed throughout the municipality;*
 - b. *To be limited by number of occupants;*
 - c. *For residential facilities for persons with a disability that are substance abuse facilities and are located within five hundred feet (500') of a school, to provide, in accordance with rules established by the department of human services under Utah Code Annotated title 62A, chapter 2, licensure of programs and facilities:*
 - (1) *A security plan satisfactory to local law enforcement authorities;*
 - (2) *Twenty four (24) hour supervision for residents; and*
 - (3) *Other twenty four (24) hour security measures; and*
 - d. *To obtain permits that verify compliance with the same building, safety and health regulations as are applicable in the same zone to similar uses that are not residential facilities for persons with a disability; and*
 - 2. *Provides that a residential facility for persons with a disability that would likely create a fundamental change in the character of a residential neighborhood may be excluded from a zone.*
- D. *The responsibility to license programs or entities that operate facilities for persons with a disability, as well as to require and monitor the provision of adequate services to persons residing in those facilities, shall rest with:*
 - 1. *For programs or entities licensed or certified by the department of human services, the department of human services as provided in Utah Code Annotated Title 62A, Chapter 5, services to people with disabilities; and*
 - 2. *For programs or entities licensed or certified by the department of health, the department of health under Utah Code Annotated Title 26, Chapter 21, the Healthcare Facility Licensing and Inspection Act.*

10-17-3: **BED AND BREAKFAST SERVICES:** *Bed and breakfast services shall meet the following requirements:*

- A. *Parking: One parking stall per guestroom and two (2) parking stalls per on premises owner.*
- B. *Maximum Guests: Maximum number of guests shall be no more than two (2) persons per bedroom with a maximum of ten occupants per residence (not including the Owner and his/her family).*
- C. *Owner On Site: The property owner shall live on site.*
- D. *Modifications: Modifications to the appearance and size of the structure should be in keeping with the residential character of the neighborhood within which the establishment is located. If modifications to the existing structures are made, they may not include separate outside entrances to the guestrooms.*
- E. *Cooking Facilities: No cooking facilities are permitted in guestrooms.*
- F. *Revocation of Permit: The conditional use permit may be revoked at any time should the use become a public nuisance.*
- G. *Site Approval, Public Hearing; Annual Review: A site approval and public hearing are required. An annual review period may be required.*
- H. *Business License Required; Room Tax: Applicants must obtain a business license and pay the current room tax applicable to motels and hotels within the city.*
- I. *Conditional Use Permit: The establishment must obtain a conditional use permit, recommended by the planning commission and approved by the city council.*
- J. *Fees: Applicant must pay all applicable fees.*
- K. *Health Requirements: All local and state health requirements must be met.*

10-17-4: NIGHTLY OR SHORT TERM RENTALS:

- A. *Blanket Prohibition: The nightly or short term rental of a residence shall be prohibited in all zoning districts of the City except to duly licensed and permitted bed and breakfast establishments.*
- B. *Nightly or Short Term Rental Defined: The nightly or short term rental is the act of leasing a residence, or any part thereof, by a person or entity to another for a consecutive period of ninety (90) calendar days or less in exchange for direct or indirect remuneration.*
- C. *Exception: The prohibition against nightly or short term rentals set forth above, may be waived only when the owner complies with all of the following:*

1. *The Owner of the residence where the nightly or short term rental occurs must have his or her primary residence within the municipal boundaries of the City. For purposes of this chapter, the term "Owner" shall mean:*
 - a. *a natural person owning an undivided interest of 100% of the residence, or*
 - b. *a business entity which owns 100% of the residence and who has a natural person principal owning 100% of the ownership interest in the business entity.*
2. *The Owner applies for and obtains a business license pursuant to Title 3, Chapter 1 of the Toquerville City Code and a nightly rental permit which is a special permit similar, but separate and distinct from a home occupation permit, but that is reviewed, approved and otherwise regulated pursuant to Title 10, Chapter 23 of the Toquerville City Code for that use. Said business license and nightly rental permit is non-transferable to another Owner or residence.*
3. *The nightly or short term rental shall not occur within the Owner's personal residence or within an accessory structure located upon the same lot or parcel as the Owner's personal residence, regardless of whether the accessory structure is an attached building or detached, and no more than one building per lot may be utilized for a nightly or short term rental.*
4. *The Owner must maintain a log with the following information:*
 - a. *Name and number of guests.*
 - b. *Number of vehicles with license plate numbers.*
 - c. *Date of occupancy.*
 - d. *Written verification that guests have agreed to comply with all applicable City rules and regulations.*
5. *Maximum number of guests in the nightly or short term rental residence shall be no more than two persons per bedroom with a maximum of ten occupants per residence.*
6. *Amplified sound that can be heard outside the residence shall not be allowed between the hours of 8:00 pm and 9:00 am.*
7. *The Owner and the residence where the nightly or short term rental occurs must comply with all applicable safety codes, laws, rules, ordinances and regulations.*
8. *Applicant must pay for and provide notification to neighboring property owners within a 300 ft. radius of a public meeting of the City's Planning Commission where the issuance of the nightly rental permit for the subject residence is being considered in compliance with Section 10-23-9 of the Toquerville City Code. However, said notice shall indicate, and the Planning Commission shall conduct, a public hearing on the application. Seventy-five percent of the property owners within the 300 ft. radius of the*

residence must not object to the application. Failure of property owner within 300 feet to submit an objection (either vocally at the public hearing or in writing prior to the start of the public hearing) to the application will be deemed consent thereto.

9. There shall be no less than 1000 ft. separation between parcel/lot boundaries of residences where nightly or short term rental will occur, and in no case shall the total number of residences with nightly rental permits exceed two percent (2%) of the entire number of residences within the City.

10. Semi-Annual Review: A mandatory review by the City's Planning Commission of the nightly rental permit granted herein must be had every six months.

11. Off Street Parking: The residence where the nightly or short term rental will occur must provide sufficient off street parking in designated areas only. There shall be one (1) off street parking stall for every bedroom in the residence. No parking by guests may occur on the streets.

12. Fees: In addition to the payment of the fee for a business license, Applicants shall pay a special application fee for the home occupation permit in an amount designated in the City's Uniform Fee Schedule which shall initially be one thousand dollars (\$1,000) to cover additional oversight costs incurred by the City.

13. Modifications: Modifications to the appearance and size of a residence where a home occupation permit for nightly or short term rental has been issued should be in keeping with the residential character of the neighborhood within which the residence is located. If modifications to the existing structures are made, they may not include separate outside entrances to bedrooms or living quarters.

14. No Separate Cooking Facilities: No separate cooking facilities are permitted in individual bedrooms or living quarters of a residence where nightly or short term rental will occur.

15. Owner Contact Info & Availability: The Owner of a residence where nightly or short term rental will occur must maintain current contact information with the City, and the Owner must be available 24 hours per during any rental period.

16. Upon finding a violation under this Section, the following penalties shall apply:

a. First violation: \$1,000.

b. Second violation: \$5,000.

c. Third violation: \$10,000.

d. Fourth violation: license automatically revoked.

17. Upon the second or subsequent violation of this Section, there shall be a mandatory review conducted before the City's Planning Commission, who shall have the ability and

right to revoke the nightly rental permit in its sole and absolute discretion. Revocation of a nightly rental permit, for any reason, shall result in a minimum 12-month waiting period prior to any new application, which revocation shall run with the land. Upon revocation, there is no guarantee of any future issuance of a nightly rental permit and all applications will be processed under the then current ordinances and in light of the City wide limitation on the nightly or short term rental of residences set forth in this Section. Failure to pay a fine as required by the previous Sub-Section shall constitute grounds for automatic revocation of the Owner's nightly rental permit.

- D. Enforcement: In addition to the fines set forth in Section C, above, all violations of this Chapter shall constitute a Class C, Misdemeanor and shall be enforced in compliance with Title 10, Chapter 5 of the Toquerville City Code.*

CODIFICATION. This Ordinance shall be codified as a Chapter 17 of Title 10 of the Toquerville City Code and any non-substantive changes required to make this Ordinance consistent with the codified Toquerville City Code, such as changes to the numbering of sections or paragraphs or references to sections or subsections of this Ordinance, may be made in conjunction with the codification of this Ordinance and without any further action or approval of the City Council.

REPEALER: This Ordinance supersedes or repeals the provisions of any ordinance or resolution that is inconsistent with the provisions of this Ordinance. Specifically this Ordinance supersedes and replaces Title 10, Chapter 17 of Toquerville City Code.

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.

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EFFECTIVE DATE: This Ordinance shall become effective immediately upon adoption by the Toquerville City Council.

VOTE TALLY

Daren Cottam	Aye _____	Nay <input checked="" type="checkbox"/>
Brad Langston	Aye <input checked="" type="checkbox"/>	Nay _____
Ty Bringhurst	Aye <input checked="" type="checkbox"/>	Nay _____
Paul Heideman	Aye <input checked="" type="checkbox"/>	Nay _____
Mark Fahrenkamp	Aye <input checked="" type="checkbox"/>	Nay _____

TOQUERVILLE CITY
a Utah municipal corporation

Date: 10-8-2015



M. Darrin LeFevre, Mayor

October 8, 2015

Attest:



Renée Garner, City Recorder

