

ORDINANCE NO. 2022-10

AN ORDINANCE AMENDING THE LaVERKIN CITY CODE TO ELIMINATE VACATION RENTALS AS A PERMITTED USE IN RESIDENTIAL ZONES AND TO RESTRICT THEM IN TOURIST/RESORT COMMERCIAL ZONES, AND TO INCREASE THE CIVIL PENALTY FOR OPERATING A BUSINESS WITHOUT A LICENSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Title 3 of *The LaVerkin City Code* ("LVCC") defines what constitutes a business in the community of LaVerkin and sets forth the City's regulations thereof, including the regulation of vacation rentals as defined in Section (Sec.) 10-1-6, LVCC (*cf.*, Sec. 3-1-1, re the terms: business, engaging in business, place of business, and each separate place of business) ; and

WHEREAS, Title 10 of LVCC (the "Zoning Title of LaVerkin City") "is designed and enacted for the purpose of promoting the health, safety, convenience, order, prosperity and welfare of the present and future inhabitants, and to promote and provide for the peace and good order, comfort, convenience, and aesthetics of the present and future inhabitants and businesses of the city, including, among other things, the lessening of congestion in the streets or roads, securing safety from fire and other dangers, providing adequate light and air, classifying land uses and land development and protecting the tax base, securing economy in governmental expenditures, fostering agricultural and other industries, protecting urban and nonurban development, and protecting property values" (Sec. 10-1-2.A, LVCC); and

WHEREAS, "to accomplish the purposes of [said] title, the city may enact ordinances, resolutions, and rules . . . that it considers necessary or appropriate for the use and development of land within the city, including ordinances . . . governing uses, density, open spaces, structures, buildings, . . . street and building orientation and width requirements, . . . unless expressly prohibited by law" (Sec. 10-1-2.); and

WHEREAS, "[u]ses of land which are not expressly permitted within a zone are . . . declared to be expressly prohibited therein," (Sec. 10-1-3.B, LVCC); and

WHEREAS, pursuant to the provisions of Titles 3 and 10, LVCC, the City Council (on July 1, 2015) adopted Ordinance Nos. 2015-04 and 2015-05, allowing vacation rentals as a permitted use in most of the zones within the City (including residential zones, and all commercial zones) and providing for their licensing, and operations, maintenance, cleanliness, safety, and sanitary conditions; and

WHEREAS, at the time that these ordinances were adopted, vacation rentals were just beginning to be recognized as a presence in the area and as a viable alternative to traditional transient lodging (such as motels, hotels, inns, lodges, and bed and breakfast establishments); and it was widely perceived by the members of the City Council that vacation rentals would thus appear/develop within the community in a slow, orderly, and dispersed manner, without the need for significant oversight or restrictions on their location by the City; and

ORDINANCE NO. 2022-10

WHEREAS, since that time, vacation rentals have become a very popular option for tourists visiting the region, and the Hurricane Valley region was noted by a prominent national magazine as being one of the most popular locations for vacation rentals in the country; and

WHEREAS, by 2018, because –

- (a) the number of actual vacation rentals was increasing, and the number of inquiries to the City with regards to such lodging and the requirements for constructing or converting existing buildings to/for such uses was growing each month; and
- (b) multiple parcels of the City's commercially-zoned property were being considered or proposed by developers or landowners for use as vacation rentals, reducing the amount of commercially-zone space for other commercial uses needed by the City to support the residents and the tourist industry in town (hotels and existing vacation rentals) such as restaurants, bike shops, etc.; and
- (c) the then current ordinances did not provide for a limitation on numbers, percentage, spacing, location, or density of vacation rentals in the City's residential zones; and
- (d) some residential areas of the community had been significantly (and negatively) impacted by an inordinate number, percentage and/or concentration of vacation rentals (the Zion View Estates subdivision being one of the hardest hit), giving the permanent residents of such areas the impression and fear that they were losing the feel and character of their neighborhoods (and that they no longer knew who their neighbors were or would be); and
- (e) there was significant (and in some parts of the community) apparent widespread concern that, if measures were not taken to stop the inflow and development of such transient lodging within the City's residential neighborhoods –
 - (1) safety and property values might or would diminish, and
 - (2) frustrations, fear, noise, and distrust would increase, and
 - (3) LaVerkin would be transformed from a tourist-friendly (or tourist-accommodating) community to a tourist community, with a loss of unity, neighborliness, safety, and hometown feel; and

therefore adopted Ordinance No. 2018-01, and Res. R-2018-01, further regulating vacation rentals, restricting them to the Tourist/Resort Commercial zone and certain residential zones, and establishing a 10% quota or limitation (to be later reduced by ordinance to 7.5%) in each of the residential zones where vacation rentals were permitted; and

ORDINANCE NO. 2022-10

WHEREAS, the City has been advised that the new and larger elementary school (previously intended to be constructed in the City of LaVerkin—providing elementary education opportunities for its young residents and those of adjacent communities) was delayed due to a previously-unintended leveling-off or decrease of school-age children in the area due to the conversion of so much of the City’s inventory of residential dwellings to temporary, short-term residential (vacation rental) purposes, thus reducing the immediate need for new facilities; and

WHEREAS, the City’s rental rates and the sales prices for residential dwellings in the City have risen dramatically in recent years, making it harder and harder to find affordable housing town for current and future City residents and their children; and

WHEREAS, the County Commission and the city councils of neighboring and other communities within the County have recently taken action to temporarily stop or to restrict the number of vacation rentals allowed within their jurisdictions, thus increasing the desirability and demand for such rentals within the community of LaVerkin—particularly with its proximity to Zion National Park; and

WHEREAS, the City is currently divided by resolution into eight (8) areas, the first seven (7) of which have all met or exceeded the 7.5% quotation or limitation; and the last one of which no house has yet be subject to a request for conversion under the 2018 ordinance to use as a vacation rental; and

WHEREAS, pursuant to Resolution R-2019 and its predecessor(s), a list has been maintained by the City Recorder of potential applicants who desire to convert their dwellings to vacation rentals in areas but for which no available license may be granted because the areas where the dwellings are located have met or exceeded the 7.5% quota or limitation (with the number on said list being 68); and

WHEREAS, Section 10-9a-504, *Utah Code Ann.* (1953) (“UCA”), provides that, without prior consideration of or recommendation by/from the Planning Commission, the City Council—if it makes a finding of **compelling, countervailing public interest**—may enact an ordinance (a) establishing a **temporary land use regulation** (b) for any part or all of the area within the municipality (c) which prohibits or regulates a land use and/or the erection, construction, reconstruction, or alteration of any building or structure or any subdivision approval (d) for a period not to exceed six months; and

WHEREAS, in April of this year, the City Council specifically found that:

- a. Interest in vacation rentals remained high in the City; and
- b. the number of actual vacation rentals continued to increase (both legal and illegal); and

ORDINANCE NO. 2022-10

- c. there was significant and widespread concern that, if measures are not taken to stop the continual inflow and development of such transient lodging (both new, within the Tourist/Resort Commercial zone; and converted from other residential use within the City's residential neighborhoods) —
- (1) the City would continue to lose valuable/prime commercial land to a quasi-residential (commercial) use of vacation rentals instead of other commercial uses desired and needed by the community to support the residents and businesses, and guests and visitors, to the community; and
 - (2) commercial diversity in the Tourist/Resort Commercial zone would continue to diminish and force related commercial uses into the Commercial Retail and General Commercial zones, reducing services and goods availability for non-tourist commercial purposes needed or desired by and within the community; and
 - (3) the abundance of vacation rentals was adversely affecting and competing with the City's current and growing hotel industry; and
 - (4) safety and property values might or would diminish, and
 - (5) parking along roadways in residential zones would continue to increase and be inordinately burdened by commercial uses and associated users/visitors; and
 - (6) frustrations, fear, noise, light, traffic, and distrust would increase, and
 - (7) the number of approved and licensed vacation rentals was so large that there was not sufficient time and resources to locate, pursue, and close down unlicensed vacation rentals; and
 - (8) more and more dwellings would be lost to use as and for vacation rentals, thus reducing the City's supply of available residential dwellings for purchase or rent for traditional residential purposes, thus —
 - (a) diminishing the quality of life and neighborhood cohesiveness in residential neighborhoods; and
 - (b) continuing to significantly drive up the cost of available housing for purchase or rental; and

ORDINANCE NO. 2022-10

- (c) adversely impacting the City's ability to provide for affordable housing within the community (particularly at a time when the area and the State in general is facing an affordable-housing crisis); and
 - (9) LaVerkin would be transformed from a tourist-friendly (or tourist-accommodating) community to a tourist community, with a loss of unity, neighborliness, safety, and hometown feel; and
- d. the resulting detriment to the community constituted a compelling, countervailing public interest—warranting prompt action by the City Council; and

WHEREAS, on April 6, 2022, the City Council adopted Ordinance 2022-04 (a “moratorium” or temporary land regulation restricting VRs in the City), and expressed therein the desire of the City Council that the Planning Commission:

- Review the matter of vacation rentals in the community, and
- Take or hear such public input as deemed necessary and prudent with regards to such matter, and
- Fashion or develop proposed rules, regulations, and restrictions that address the public's and Council's concerns with regards to the orderly growth, siting, development, and use of vacation rentals within the city limits of LaVerkin; and
- Forward such proposed rules and regulations, to the City Council, in the form of one or more proposed ordinances at least one month prior to sunset date of this Ordinance (which is October 3, 2022); and

WHEREAS, after consideration discussion by the Planning Commission, a public hearing was duly advertised ("noticed up") and held on the 14th day of September, 2022, and public input was taken with regards to the abovementioned application; and

WHEREAS, upon consideration of said public input and further discussion of the members of the Planning Commission, the Planning Commission recommended that the City Council approve certain changes, amendments, and/or deletions to Chapters 3 and 10 of the LVCC; and

WHEREAS, it is the intent of the City Council to allow the continued use of currently-existing and approved Vacation Rentals, for so long as such use is not abandoned, subject to continued regulation and application of the LVCC and to the extent herein and hereinafter provided for their continuance, regulation, and licensing; and

ORDINANCE NO. 2022-10

WHEREAS, the City Council, having considered the matter, deems the following proposed changes, amendments, and/or deletions to Chapters 3 and 10 of the LVCC to be in the best interests of the City and its residents, guests, and businesses.

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF LaVERKIN, UTAH, THAT THE FOLLOWING CHANGES, AMENDMENTS, AND DELETIONS BE MADE TO CHAPTERS 3 AND 10 OF THE LaVERKIN CITY CODE:

SECTION I: AMENDMENT OF THE CODE OF THE LaVERKIN CITY CODE, BY REVISING THE PROVISIONS OF SUBSECTION C OF SECTION 3-1-5-2:

Subsection C of Section 3-1-3-2 of *The LaVerkin City Code ("LVCC")* is hereby amended to read as follows:

- C. Provided that, group homes, day care facilities, preschools, dance studios, and short-term rentals (where and to the extent permitted, including those grandfathered under prior law) shall not qualify for the fee exemption regardless of whether or not they are allowed in the zone as a home occupation.

SECTION II: AMENDMENT OF THE CODE OF THE LaVERKIN CITY CODE, BY REVISING THE PROVISIONS OF SUBSECTION C.3 OF SECTION 3-1-6:

Subsection C of Section 3-1-6, LVCC, is hereby amended to read as follows:

- 3. Civil Penalty: Any business for which a license is required and is not otherwise exempt, that transacts business in this City without such license, is subject to the imposition of a civil penalty of two hundred fifty dollars (\$250.00) (to be assessed in addition to any other fees, and regardless of the application or assessment, by a court, of any criminal penalties which may attach to such conduct).

SECTION III: AMENDMENT OF THE CODE OF THE LaVERKIN CITY CODE, BY REVISING THE DEFINITION OF "TRANSIENT LODGING FACILITY OR TRANSIENT LODGE FACILITIES" SET FORTH IN THE PROVISIONS OF SECTION 3-11-1:

The definition of "TRANSIENT LODGING FACILITY OR TRANSIENT LODGING FACILITIES" set forth in Section 3-11-1, LVCC, is hereby amended to read as follows:

ORDINANCE NO. 2022-10

TRANSIENT LODGING FACILITY OR TRANSIENT LODGING FACILITIES (Also Known Herein By The Phrase HOTEL, MOTEL OR RESORT): Facilities providing transient lodging for a fee, where and to the extent permitted (including those grandfathered under prior law), and includes, but is not limited to, hotels, motels, motor hotels, inns, lodges, bed and breakfast establishments, condominiums constituting standard lodging units under section 3-8-1 of this title, resorts, resort camps, tourist courts, hostels, dormitories and similar facilities; and shall mean every building, or structure, with all buildings and facilities in connection therewith, kept, used, maintained as, advertised as, or held out to the public to be, a place where living accommodations are furnished to transient guests or to groups normally occupying such facilities on a seasonal or short term basis.

SECTION IV: AMENDMENT OF THE CODE OF THE LaVERKIN CITY CODE, BY REVISING THE PROVISIONS OF TITLE AND THE INTRODUCTORY PARAGRAPH OF SUBSECTION A SECTION 3-11-12:

The Title and the Introductory Paragraph of Subsection A of Section 3-11-12, LVCC, is hereby amended to read as follows:

3-11-12: BED AND BREAKFAST AND VACATION RENTAL FACILITIES (WHEN, WHERE, AND TO THE EXTENT PERMITTED, INCLUDING THOSE GRANDFATHERED UNDER PRIOR LAW):

- A. Transient Facilities: Bed and breakfast ("BnB") and vacation rental ("VR") facilities (when, where, and to the extent permitted, including those grandfathered under prior law) are and constitute transient facilities, subject to government regulation, the licensing requirements of chapter 1 of this title, and the transient room tax imposed pursuant to chapter 8 of this title. However, there are substantial differences between the character of BnB and VR facilities and other types of transient facilities, and the degree of regulation necessary to protect against harm to occupants of BnBs and VRs and adjoining properties. Therefore BnBs and VRs:

SECTION V: AMENDMENT OF THE CODE OF THE LaVERKIN CITY CODE, BY REVISING THE PROVISIONS OF SUBSECTION K.1 OF SECTION 3-11-12:

Subsection K.1 of Section 3-11-12, LVCC, is hereby amended to read as follows:

ORDINANCE NO. 2022-10

1. Restrictions imposed by this subsection are in recognition of the premise that BnBs and VRs provide lodging for a transient population that may or may not honor neighborhood mores or exhibit neighborly consideration to the same extent as permanent residents. No new VR facility may be created or operated, and no existing VR facility may be expanded, in residential zones: these rules and regulations apply to those VR facilities licensed and operational before they were no longer permitted in residential zones.

SECTION VI: AMENDMENT OF THE CODE OF THE LaVERKIN CITY CODE, BY REVISING THE DEFINITION OF "VACATION RENTAL (VR)" SET FORTH IN THE PROVISIONS OF SECTION 10-1-6:

The definition of "VACATION RENTAL (VR)" set forth in Section 10-1-6, LVCC, is hereby amended to read as follows:

VACATION RENTAL (VR): Sometimes known as a vacation home, vacation condominium (or "condo"), or vacation dwelling, a fully furnished overnight transient lodging facility (as that term is defined in section 3-11-1 of this code), other than the owner's primary residency, and not constituting a boarding house, that: a) is rented and used temporarily for recreational purposes (such as vacations), and b) complies with all applicable rules, regulations, and occupancy loads of the international building codes. [VRs are currently limited to Tourist/Resort-Commercial zones.]

SECTION VII: AMENDMENT OF THE CODE OF THE LaVERKIN CITY CODE, BY REVISING THE TITLE TO SECTION 10-6A-2-1:

Section 10-6A-2-1, LVCC, is hereby amended to read as follows:

10-6A-2-1: BED AND BREAKFAST FACILITIES:

See section 10-7-20 of this title.

ORDINANCE NO. 2022-10

SECTION VIII: AMENDMENT OF THE CODE OF THE LaVERKIN CITY CODE, BY REVISING THE TITLE TO SECTION 10-6B-2-1:

Section 10-6B-2-1, LVCC, is hereby amended to read as follows:

10-6B-2-1: BED AND BREAKFAST FACILITIES:

See section 10-7-20 of this title.

SECTION IX: AMENDMENT OF THE CODE OF THE LaVERKIN CITY CODE, BY REPEALING AND DELETING SECTION 10-6B-2-1:

Section 10-6C-2-1, LVCC, is deleted and repealed.

SECTION X: AMENDMENT OF THE CODE OF THE LaVERKIN CITY CODE, BY REVISING THE TITLE TO SECTION 10-6B-2-1:

Section 10-6D-2-1, LVCC, is hereby amended to read as follows:

10-6D-2-1: BED AND BREAKFAST FACILITIES:

See section 10-7-20 of this title.

SECTION XI: AMENDMENT OF THE CODE OF THE LaVERKIN CITY CODE, BY REPEALING AND DELETING SECTION 10-6F-2-1:

Section 10-6F-2-1, LVCC, is deleted and repealed.

SECTION XII: AMENDMENT OF THE CODE OF THE LaVERKIN CITY CODE, BY REVISING THE PARAGRAPH OF 10-6G2-2 BEGINNING WITH THE PHRASE “TOURIST SUPPORT”:

The paragraph of Section 10-6G2-2, LVCC, beginning with the phrase “Tourist support” is hereby amended to read as follows:

ORDINANCE NO. 2022-10

Tourist support, including hotels, motels, inns, lodges, bed and breakfast facilities and/or vacation rentals (VRs), and tourist information, curio and souvenir shops, camera and photo shops. [VRs are allowed with an approved site plan and development agreement; and are limited to developments that are at least two (2) acres in size and for which VRs and their private and limited public space do not cumulatively occupy more than fifteen percent (15%) of the development.] Condominiums and timeshare units are allowed with a development agreement. Recreational vehicles (RVs), small transient living quarters not specified hereinabove (including, but not limited to, cabins and yurts), subject to the provisions of section 10-6G2-2-5 of this article.

SECTION XIII: AMENDMENT OF THE CODE OF THE LaVERKIN CITY CODE, BY REVISING THE PROVISIONS OF SECTION 10-7-20:

Section 10-7-20, LVCC, is hereby amended to read as follows:

10-7-20: BED AND BREAKFAST FACILITIES AND VACATION RENTALS:

- A. In any zone provided for in this title, where bed and breakfast facilities (BnBs) and/or vacation rentals (VRs) are allowed as permitted uses (or permitted uses, with conditions), such BnBs and/or VRs are subject to and shall fully comply with the applicable provisions and conditions of: 1) title 3, chapters 1, 8, and 11, of this Code, 2) title 4, "Public Health And Safety", of this Code (including noise, odor, and nuisance restrictions), 3) title 9, chapter 1, "Building Related Codes", of this Code, 4) section 10-7-17, "Home Occupations", of this chapter, 5) chapter 10, "Off Street Parking", of this title, and 6) chapter 11, "Sign Regulations", of this title, except as otherwise specifically provided herein.
- B. Licensed BnBs and/or VRs shall be permitted, in the below- designated zones, as follows, subject to the provisions, conditions, and restrictions provided herein:

ORDINANCE NO. 2022-10

Zone	BnB	VR	Specific Limitations
Zone	BnB	VR	Specific Limitations
R-1-8 (One-Family Residential)	X		
R-1-10 (One- and Two-Family Residential)	X		(single-family dwellings only)
R-A-1 (Residential-Agricultural)	X		
R-1-14 (Low-Density Residential)	X		
MH (Mobile Home)			
Comm-T (Tourist/Resort Commercial)	X	X	(with an approved site plan, development agreement, and as limited in Section 10-6G2-2)

- C. In order to: 1) maintain neighborhood aesthetics, stability, safety, and cohesion, 2) limit commercial creep, and 3) mitigate the potential negative impacts of transient lodging on residential neighborhoods: VRs (grandfathered under prior law) and/or BnBs may be allowed in existing single-family dwellings in the above-referenced residential and mobile home zones of the City to the extent that:
1. They are properly licensed under title 3 of this Code.
 2. The use of a dwelling as a BnB or VR does not:
 - a. Change the appearance of the dwelling or property for residential purposes; or
 - b. Allow for, facilitate, or otherwise permit the occupancy load (under section 3-11-12 of this Code and this section) or the dwelling limitations of the underlying zone (under this title) to be exceeded.
 3. The BnB or VR facility is properly maintained, painted and kept in good repair - and associated grounds and landscaped areas are properly maintained and watered - in order that the use does not detract from the general appearance of the neighborhood.

ORDINANCE NO. 2022-10

4. All parking is provided for off-street, and is not to be allowed on the public rights-of-way.
 - a. Required parking areas and access to parking areas shall be maintained and available for use at all times.
 - b. Parking may not consume or otherwise impact more than forty percent (40%) of a front yard.
 - c. The required number of off-street parking spaces shall be as follows:
 - (1) BnBs shall require two (2) parking spaces for the resident family, plus 1.1 spaces for each non-resident living or sleeping unit, plus adequate parking for accessory uses pertaining to the use of the property for a bed and breakfast facility.
 - (2) VRs shall require 1.1 spaces for each living or sleeping unit (defined, for purposes of this subsection, to mean each room in the facility designated for sleeping purposes and offered for such use by guests or patrons), plus adequate parking for accessory uses pertaining to the use of the property for a vacation rental.
5. The occupancy load of the BnB or VR structure, as established or amended (before use by the City's building official), is not to be exceeded, and in no case shall be greater than fifteen (15) (not counting the resident household in a BnB).
6. With regards to VRs (where permitted or are grandfathered as nonconforming uses):
 - a. Those who license their residential structures as a VR, but fail to use their structure for that purpose and to collect the applicable taxes thereon (including the Transient Tax), at least once before the end of the following calendar year following licensing, or during any subsequent calendar year thereafter, may lose their right to continue said use after the end of that period of nonuse: it shall be considered lapsed and the use abandoned.

ORDINANCE NO. 2022-10

- b. A purchaser or grantee of a residential structure, that was properly licensed by the seller or grantor as a VR immediately prior to the purchase or conveyance, may continue to license and operate the residential structure as a VR to the same extent as his or her predecessor in interest, provided that:
 - (1) The residential unit was licensed as a VR through the date of the sale (in or under the name of the seller); and
 - (2) The purchaser or grantee, not later than forty-five days following the later of the closing on the purchase or recording the deed on the property containing the residential structure that had been licensed as a VR, provides the City's Business License Clerk or City Recorder with a written Notice of Intent (letter), indicating the purchaser's or grantee's intent to license and use the residential unit as a VR; and
 - (3) The purchaser applies for and receives, within six months of the date of the above- referenced closing or recording, a business license to operate the residential unit as a VR.
- 7. Notwithstanding the prohibition of signs in subsection 10-7-17A8 of this chapter, one unlighted wall identification sign measuring not more than twenty (20) square feet shall be permitted.

SECTION XIV: REPEAL OF CONFLICTING PROVISIONS.

All ordinances and resolutions, or parts or provisions thereof, in conflict with the provisions of this Ordinance, are hereby repealed to the extent that they conflict herewith.

SECTION XV: SEVERABILITY.

The sections, paragraphs, sentences, clauses, and phrases of this Ordinance are severable. If any such section, paragraph, sentence, clause, or phrase shall be declared invalid or unconstitutional by the valid judgment or decree of a Court of competent jurisdiction, such invalidity or unconstitutionality shall not affect any of the remaining sections, paragraphs, sentences, clauses, or phrases of this Ordinance.

ORDINANCE NO. 2022-10

SECTION XVI: EFFECTIVE DATE.

In the opinion of the City Council of LaVerkin City, it is necessary for the preservation of the peace, welfare, health, and safety of the inhabitants of LaVerkin City that this Ordinance take effect as soon as possible. This Ordinance, therefore, shall take effect immediately upon its passage and first publication as provided by law.

PASSED AND ADOPTED by the City Council of LaVerkin City this 21st day of September, 2022.



KELLY WILSON, Mayor

ATTEST:



CHRISTY BALLARD, City Recorder