

## **ORDINANCE NO. 2023-02**

### **AN ORDINANCE AMENDING CERTAIN SECTIONS OF THE LaVERKIN CITY CODE TO PROVIDE FOR AN INCREASE IN PERMITTED HEIGHT OF TOURIST TRANSIENT LODGING FACILITIES (HOTELS, MOTELS, INNS, AND LODGES) WITHIN THE COMMERCIAL ZONES OF THE CITY; 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**, the manner of addressing the height of commercial buildings was radically altered in the City in April 2007, with a regular height limitation of thirty-five / forty-five foot high (35’ / 45’) codified and an exception to the rule possible with the use of a development agreement under the provisions of Chapter 12 of Title 10; and

**WHEREAS**, the height of tourist transient lodging facilities (to include hotels, motels, inns, and lodges) sought to be constructed within the City in recent years routinely exceed the limitations placed on such facilities absent a development agreement (to the point of the exception swallowing the rule); and

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**WHEREAS**, the current trend for such facilities is for buildings of heights in excess of the limitations established in 2007, and development agreements are increasingly performing little more than an unnecessary, perfunctory role; and

**WHEREAS**, the City is amenable to raising the height limitation, but still has an interest in limiting or restricting buildings above such height (without a development agreement establishing a legitimate and justifiable interest in a greater height);

**WHEREAS**, the City now has access to a ladder truck that can facilitate fire-fighting capabilities for taller buildings than in the past; and

**WHEREAS**, the City Staff is of the opinion that a greater height can and should be allowed for such facilities, without the need for a development agreement (up to the proposed limits provided herein); and

**WHEREAS**, a public hearing was duly advertised ("noticed up") and held on the 25<sup>th</sup> day of January, 2023, and public input was taken with regards to the proposed revision of the applicable height limitations; 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 the proposed changes to the Zoning Regulations found at Title 10, LVCC, as herein set forth; and

**WHEREAS**, the City Council, having considered the matter, deems the following proposed changes, amendments, and/or deletions to Title 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 TITLE 10 OF THE LaVERKIN CITY CODE:**

**SECTION 1:** AMENDMENT OF THE CODE OF THE LaVERKIN CITY CODE, BY REVISING THE PROVISIONS OF SECTION 10-6G-4:

Section 10-6G-4 of *The LaVerkin City Code* ("LVCC") is hereby amended to read as follows:

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### 10-6G-4: HEIGHT REGULATIONS:

- A. Except as provided in Subsection B below, or as permitted in an approved development agreement under the terms and conditions of Section 10-12-5 of this Code, no building shall be erected to a height greater than thirty-five feet (35') as measured from its tallest side or point, except that facades, rooflines and other non-occupied building improvements may be constructed to a maximum height of forty-five feet (45') inclusive of the underlying building structure. However, the City shall not impose or restrict the height of a structure in a manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution, unless the City demonstrates that imposition of the burden on that person, assembly or institution:
1. Is in furtherance of a compelling governmental interest; and
  2. Is the least restrictive means of furthering that compelling governmental interest.
- B. Except as permitted in an approved development agreement under the terms and conditions of Section 10-12-5 of this Code, no hotels, motels, inns, and lodges (sometimes known as tourist transient lodging facilities) shall be erected to a height greater than fifty-five feet (55'), as measured from its tallest side or point, except that facades, rooflines, and other non-occupied building improvements may be constructed to a maximum height of sixty-six feet (66'), inclusive of the underlying building structure.

### **SECTION II:** AMENDMENT OF THE CODE OF THE LaVERKIN CITY CODE, BY REVISING THE PROVISIONS OF SECTION 10-6G2-4:

Section 10-6G1-4 of *The LaVerkin City Code* ("LVCC") is hereby amended to read as follows:

### 10-6G1-4: HEIGHT REGULATIONS:

- A. Except as provided in Subsection B below, or as permitted in an approved development agreement under the terms and conditions of Section 10-12-5 of this Code, no building shall be erected to a height greater than thirty-five feet (35') as measured from its tallest side or point, except that facades, rooflines and other non-occupied building improvements may be constructed to a maximum height of forty-five feet (45') inclusive of the underlying building structure. However, the City shall not impose or restrict the height of a structure in a manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution, unless the City demonstrates that imposition of the burden on that person, assembly or institution:

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1. Is in furtherance of a compelling governmental interest; and
  2. Is the least restrictive means of furthering that compelling governmental interest.
- B. Except as permitted in an approved development agreement under the terms and conditions of Section 10-12-5 of this Code, no hotels, motels, inns, and lodges (sometimes known as tourist transient lodging facilities) shall be erected to a height greater than fifty-five feet (55'), as measured from its tallest side or point, except that facades, rooflines, and other non-occupied building improvements may be constructed to a maximum height of sixty-six feet (66'), inclusive of the underlying building structure.

### **SECTION III:** AMENDMENT OF THE CODE OF THE LaVERKIN CITY CODE, BY REVISING THE PROVISIONS OF SECTION 10-6G2-4:

Section 10-6G2-4 of *The LaVerkin City Code* ("LVCC") is hereby amended to read as follows:

#### **10-6G-4: HEIGHT REGULATIONS:**

- A. Except as provided in Subsection B below, or as permitted in an approved development agreement under the terms and conditions of Section 10-12-5 of this Code, no building shall be erected to a height greater than thirty-five feet (35') as measured from its tallest side or point, except that facades, rooflines and other non-occupied building improvements may be constructed to a maximum height of forty-five feet (45') inclusive of the underlying building structure. However, the City shall not impose or restrict the height of a structure in a manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution, unless the City demonstrates that imposition of the burden on that person, assembly or institution:
1. Is in furtherance of a compelling governmental interest; and
  2. Is the least restrictive means of furthering that compelling governmental interest.
  3. Except as permitted in an approved development agreement under the terms and conditions of Section 10-12-5 of this Code, no hotels, motels, inns, and lodges (sometimes known as tourist transient lodging facilities) shall be erected to a height greater than fifty-five feet (55'), as measured from its tallest side or point, except that facades, rooflines, and other non-occupied building improvements may be constructed to a maximum height of sixty-six feet (66'), inclusive of the underlying building structure.

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### **SECTION IV: AMENDMENT OF THE CODE OF THE LaVERKIN CITY CODE, BY REVISING CERTAIN PROVISIONS OF SECTION 10-12-5:**

The introductory paragraph and Subsections A and B.1 of *The LaVerkin City Code* ("LVCC") are hereby amended to read as follows:

#### **10-12-5: HEIGHT MODIFICATION STANDARDS:**

It may be appropriate to increase the height of buildings to more than fifty-five feet (55'), and to increase the height of facades, rooflines, and other non-occupied building improvements (collectively hereafter "building improvements") to more than sixty-six feet (66'), to achieve preferable architectural or aesthetic elements, provided careful and creative planning methods are utilized in the design of the building. The city council may approve an increase in allowable height of a building or building improvements subject to the following requirements:

- A. Planning Commission Recommendation: A request to construct a building where the proposed building height will exceed fifty-five feet (55') or building improvements will exceed sixty-six feet (66') shall first be submitted to the planning commission for its recommendation to the city council after notice and a public hearing before the planning commission as required by this title. A draft of the development agreement described below shall be submitted to the planning commission sufficiently in advance of the public hearing to facilitate discussion of the proposed development agreement at the public hearing.
- B. Development Agreement:
  - 1. Approval of any building greater than fifty-five feet (55') or building improvement greater than sixty-six feet (66') shall be contingent upon the developer entering into a development agreement in form and content as approved by the city council. Such agreement shall constitute a binding contract between the developer and the city (the parties) and shall be construed together with the provisions of this chapter and any conditions attached thereto, to accomplish and give effect to the purposes set forth herein. The city council, by and through the mayor, shall be authorized to sign the development agreement(s) on behalf of the city.

### **SECTION V: 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.

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**SECTION VI: 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.

**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 1 day of February, 2023.

  
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KELLY WILSON, Mayor

ATTEST:

  
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CHRISTY BALLARD, City Recorder