

TOQUERVILLE CITY

ORDINANCE 2023-XX

AN ORDINANCE AMENDING AND RESTATING IN ITS ENTIRETY OF ARTICLE B, CHAPTER 18, OF TITLE 10 OF THE TOQUERVILLE CITY CODE ELIMINATING THE MULTIPLE USE ZONING DISTRICT AS A POSSIBLE ZONING DISTRICT WHERE AN EXTRACTION INDUSTRIES OVERLAY ZONING DESIGNATION COULD BE APPLIED FOR AND PERMITTED.

RECITALS

WHEREAS Toquerville City (“the City”) is a Utah municipal corporation and political subdivision of the State of Utah and as such, holds the delegated police powers under the Utah Constitution to act as the Land Use Authority within its municipal boundaries - with the power to regulate those items set forth in Utah Code Ann. § 10-9a-102(2).

WHEREAS the City, by and through its legislative body, the Toquerville City Council (“City Council”), is required to enact all necessary land use regulations as required by Utah Code Ann. § 10-9a-501.

ORDINANCE

NOW THEREFORE, be it ordained by the City Council of Toquerville City, State of Utah as follows:

1. AMENDMENT AND RESTATEMENT OF ARTICLE B, CHAPTER 18, TITLE 10 OF THE TOQUERVILLE CITY CODE. Article B (Grading Permit) of Chapter 18 (Permits Required) of Title 10 (Land Use Regulations) of the Toquerville City Code is hereby amended and restated in its entirety as follows:

ARTICLE B. GRADING PERMIT

SECTION:

10-18B-1: Permit Required; Exceptions

10-18B-2: Review Process

10-18B-3: Standards For Review

10-18B-4: Discharge Prohibitions

10-18B-5: Dust Control

10-18B-6: Disposal Of Cleared Vegetation

10-18B-7: Nonconstruction Areas Protected

10-18B-8: Underground Public Utilities Protected

10-18B-9: Grading Operations

10-18B-10: Historic Or Prehistoric Ruins

10-18B-11: Expiration/Annual Review

10-18B-12: Enforcement

10-18B-1: PERMIT REQUIRED; EXCEPTIONS:

A. General Requirement: No person shall commence or perform any grading, excavation, filling or clearing of land without first having obtained a permit from

the Zoning Administrator and ascertaining the existence and location of any underground utilities. No grading permit shall be issued except in connection with a permitted use allowed within the zoning district in which the property that is to be graded, filled or cleared is located. Any such permitted use that requires a building permit or other approval as provided by this Title, such as home construction or a commercial site or a subdivision, must obtain approval as provided under this Title before a grading permit may be issued. All grading plans submitted for approval must be prepared by a professional engineer licensed in the State of Utah.

B. Exemptions: The applicability of any of the below-listed exemptions must be determined by the Zoning Administrator.

1. Agricultural: Grading, excavation, filling or clearing for agricultural purposes within an agricultural zone, that does not modify the elevation of the existing ground, shall be exempt from a grading permit. Grading, excavation, etc., associated with nonagricultural uses or construction, in an agricultural zone, shall require a grading permit.

2. Residential Landscaping: Minor grading or clearing associated with landscaping projects for single-family residential uses, that do not modify the elevation of the existing ground shall be exempt from a permit requirement.

3. Non-disturbance of Natural Grade: Minor Grading (residential), excavation, filling or clearing that does not disturb the natural grade of more than two thousand (2,000) square feet or result in a change to the natural grade, shall be exempt from permit requirements.

4. Public Facility Projects: Grading required to construct Public Facilities including roadways and utility improvements approved by the City Council shall be exempt from permit requirements.

C. Scope of Permit: A grading permit and the approved grading plan is intended to be utilized for grading purposes only and is not to be used for the purpose of constructing on-site or off-site improvements. Issuance of a grading permit based on an approved grading plan does not constitute approval of driveway locations or sizes, parking lot structural sections or layout of any structure, ADA-related requirements, building locations or foundations, walls, curbing, off-site drainage facilities or other items not related directly to the basic grading operation. On-site and off-site improvements shall be constructed from construction plans and drawings approved by the City.

D. Stockpiling of material is prohibited under the exclusive use of this Article.

10-18B-2: REVIEW PROCESS:

A. Application and Review Process: Grading permit application forms may be obtained from the City and shall be submitted to the Zoning Administrator. Applications must be signed by the property owner. If an agent is applying for the grading permit, an Affidavit from the owner that gives the agent the authority to apply for the grading permit is required. The following must be included in the grading permit application:

- 1. Minor Grading: "Minor Grading" is defined as grading, excavation, filling, or clearing that disturbs the natural grade of more than two thousand (2,000) square feet but not more than one thousand (1,000) cubic yards. Prior to the commencement of any Minor Grading, an applicant will submit a "Minor Grading Plan and Drainage Plan" consisting of the following:*

- a. *Location of the site.*
 - b. *Name of the owner/applicant.*
 - c. *A statement of the credentials of the person who prepared the plan.*
 - d. *Date the plan was prepared.*
 - e. *A general vicinity of the proposed site.*
 - f. *Limiting dimensions and depth of cut and fill.*
 - g. *Location of any buildings or structures where work is to be performed and the location of any buildings or structures within 30 feet of the proposed grading.*
 - h. *Typical cross-section of the cuts/fills resulting from excavation and grading work.*
 - i. *Retaining walls greater than 4 ft in height or creating slopes steeper than 2 horizontal to 1 vertical must be engineered.*
 - j. *Additional items as required by the city.*
2. *Engineered Grading: "Engineered Grading" is defined as grading, excavation, filling, or clearing that disturbs the natural grade of more than one thousand (1,000) cubic yards. Prior to the commencement of any Engineered Grading, an applicant must submit an "Engineered Grading Plan and Drainage Plan" consisting of the following:*
- a. *All submitted plans and specifications must be stamped and signed by a professional civil engineer licensed in the State of Utah.*
 - b. *Anticipated schedule of commencement of proposed excavation and grading.*
 - c. *Plans shall indicate the nature and extent of the work to be performed and that the work will conform to the most current version of the Uniform Building Code, the details outlined in the most current version of the International Building Code, and all relevant laws, ordinances, rules, and regulations and shall contain the following:*
 - i. *The first sheet of each set of the plans shall indicate the location of the work, name and address of the owner, a statement of the credentials of the engineer who prepared the plans and the date the plan was prepared including revision dates.*
 - ii. *General vicinity of the proposed site.*
 - iii. *Property limits and accurate contours of existing ground and details of terrain.*
 - iv. *Existing Ground Slope Map for the proposed site.*
 - v. *Limiting dimensions, elevations, or finish contours to be achieved by the grading and proposed drainage channels and related construction.*
 - vi. *Typical cross-sections of cuts/fills resulting from excavation and grading work.*
 - vii. *Details of surface and subsurface drainage devices, retaining walls, cribbing, dams, etc. to be constructed with or as a part of the proposed work.*
 - viii. *A Drainage Study.*
 - ix. *Location of any existing buildings or structures on the site and the location of any buildings or structures on adjacent property which is within 30 feet of the site or which may be affected by the proposed grading.*

- x. *A soils engineering report with the recommendations incorporated in the plans and specifications. Soils engineer shall acknowledge that plans are in accordance with the soils report by stamping and signing the plan or by letter.*
 - xi. *An erosion control plan stamped and signed by a professional civil engineer licensed in the State of Utah.*
 - xii. *SWPPP prepared by a stormwater inspector certified in the State of Utah.*
 - xiii. *A permanent erosion control plan addressing the final conditions of the site.*
 - xiv. *State of Utah – NOI.*
 - xv. *A fugitive dust plan implementing best management practices for permanent and ongoing dust control including the installation of an air quality index monitor whose data is readily accessible to the City.*
 - xvi. *A detailed narrative containing:*
 - A. *An estimate of the volumes, in cubic yards, of cut and/or fill and the area of the site to be graded.*
 - B. *A statement regarding the phasing and timing of any grading activities. If the applicant/permittee needs to grade materially out of sequence, or fails to grade in sequence, as identified in the narrative and the Engineered Grading Plan, the City reserves the ability to invoke its enforcement rights as set forth in 10-18B-12.*
 - C. *A statement concerning the ultimate disposition of any excess dirt that shall remain within City limits. Any location within the City limits used for the disposal of excess dirt shall require a separate grading permit application and issuance of a separate grading permit for the receiving site.*
 - D. *A description of equipment and methods to be employed in the grading process.*
 - xvii. *Any additional information reasonably deemed necessary by the City.*
- d. *In addition, the grading plan shall contain an estimate of the volumes, in cubic yards, of cut and/or fill and area of site to be graded.*
 - e. *Any location within the city limits used for import of excess dirt shall require a separate grading permit application and issuance of a separate grading permit for the receiving site.*
- 3. *Proof of land ownership in the form of a recorded deed or grant, recorded plat or title insurance policy not older than sixty (60) days at time of application.*
 - 4. *Payment of the required grading plan review and permit fees in accordance with the City's Consolidated Uniform Fee Schedule.*
- B. *Multiple Engineered Grading Sites: For any grading which shall require export or import of materials from or to other non-contiguous sites within City limits, a grading permit shall be obtained for each grading site.*
 - C. *City Review: The Zoning Administrator shall determine the adequacy of the application and may require the submission of further information where necessary.*
 - D. *Inspections: All construction or work for which a permit is required shall*

be subject to inspection at all reasonable times by the Zoning Administrator and Public Works inspector. The Zoning Administrator and Public Works Inspector may make any inspections of any construction work deemed necessary to ascertain compliance with the provisions of this article and other ordinances which are applicable. The permittee shall notify the Zoning Administrator and Public Works inspector when grading reaches completion and prior to being covered or concealed by additional work. Whenever any work on which inspections are required is covered or concealed by additional work without first having been inspected, the Zoning Administrator may require, through written notice, that such work be exposed for examination. The work of exposing and recovering shall be an expense of the permittee requiring the inspection.

E. Grading Bond: In reviewing a grading permit application, the Zoning Administrator may require the applicant/permittee to post a grading bond, in the form of (i) a cash deposit or (ii) an irrevocable letter of credit, from a licensed and insured financial institution in favor of the City in an amount sufficient to cover ten percent (10%) of the cost to perform the grading identified in the grading and drainage plan. The cost of grading shall be determined by either an approved engineer's estimate of cost or an accepted bid from a licensed and bonded contractor who will be performing the grading work. The purpose of the grading bond is to ensure that the graded area maintains a level of appearance and stability as determined by the City. The City will approve the cost breakdown for the proposed bond prior to the City accepting said bond. Once the City approves the cost breakdown, the applicant will be required to provide the bond in the amount shown. Said bond must also comply with any applicable provisions in Section 10-5-3, "Security For Completion" of this Title. Further, if one or more of the following instances are present, a grading bond in the form described above shall be mandatory:

- 1. Grading that is to occur within any area that is designated as part of the City's Hillside Development Overlay Zone will need to comply with (10-16A-1 et seq of this Title);*
- 2. Any off-site grading will require the written permission of one or more adjacent property owners;*
- 3. Any project in which on-site drainage structures/storm drain system connects to a City storm drain and drainage facilities are constructed in concurrence with grading plan;*
- 4. Any grading plan in which the scope of work increases the potential to transport silt/sediment into a public right of way and/or the City's storm drain system;*
- 5. Any grading plan in which the scope of work would create a public safety risk in event of work stoppage;*
- 6. Any grading plan in which the Zoning Administrator reasonably determines would create an increased risk of possible damage or injury to residents or Public Facilities of the City; and/or*
- 7. Grading that shall require any export or import of materials from any source.*

10-18B-3: STANDARDS FOR REVIEW:

All grading, filling and clearing operations which are allowed under this Article shall be consistent with Section 10-21-9 of this Title, and shall be designed to:

- A. Minimize cuts and fills on steep or hazardous terrain.*
- B. Eliminate scars from cuts and fills, and preserve the natural scenic beauty of the area, such as by rounding off sharp angles at the top, toe and sides of cut and fill slopes to preserve, match or blend with the natural contours and undulation of the land, and by retaining trees, brush and other native vegetation where possible.*
- C. Limit clearing of vegetation or disturbances of the soil to those areas of proven stability, taking into consideration geologic hazards and soil conditions.*
- D. Assure that the natural runoff capacity of hillsides, slopes, graded areas, cleared areas, filled areas or streams will not be exceeded, causing flooding, erosion or silting greater than that which would have occurred if the land had been left in its natural state.*
- E. Whether or not the proposed grading will occur within a designated flood plain which will require a separate permit from the City's Certified Flood Plain Administrator.*

10-18B-4: DISCHARGE PROHIBITIONS:

- A. Scope: No solid or liquid waste materials, including soil, silt, clay, sand and other organic or earthen materials shall be discharged, either during the course of the grading process or as a result of changes created by the grading process covered under the permit into any creeks or streams, onto lands below the high water level of the same, or onto adjoining property.*
- B. Control Devices: In order to prevent such discharges from occurring, approved erosion and siltation control devices may be required by the Zoning Administrator or City designee for all grading and filling.*

10-18B-5: DUST CONTROL:

Whenever the native ground cover is removed or disturbed, or whenever fill material is placed on the site, the exposed surface shall be treated to eliminate dust arising from the exposed material. The Zoning Administrator must approve dust control methods. All dust control measures must meet local, state, and federal standards.

10-18B-6: DISPOSAL OF CLEARED VEGETATION:

Vegetation removed during clearing operations shall be disposed of in a manner approved by the Zoning Administrator.

10-18B-7: NONCONSTRUCTION AREAS PROTECTED:

- A. There shall be no excavation on the site before the Zoning Administrator has approved the location (stakeout) of the drives, parking sites, building sites and other areas to be graded or filled.*
- B. Construction equipment shall be limited to the actual area to be graded according to the approved plans. No vehicle of any kind shall pass over areas to be left in their natural state according to the approved plans.*
- C. Appropriate barriers around all native vegetation proposed for retention may be required to be erected during construction.*
- D. The permittee shall be fully responsible for any damage caused to existing trees or other vegetation. The permittee shall carry the responsibility both for his own employees and for any and all subcontractors from the first day of*

construction until the notice of completion is filed.

10-18B-8: UNDERGROUND PUBLIC UTILITIES PROTECTED:

The contractor shall ascertain and verify the location of any public underground utilities that may be on the property before doing any grading excavation, and once located, he shall take reasonable care to protect and avoid damage to any such underground utilities by allowing forty eight (48) hours for such utilities to be located. Any and all damage caused to public utilities by any act or negligence of the contractor's employees shall be repaired at the contractor's expense to the satisfaction of the utility company and/or the City.

10-18B-9: GRADING OPERATIONS:

A. Hours of operation shall not begin before seven (7:00) AM, and shall not continue after the hour of seven (7:00) PM. No operations shall take place on Sunday or holidays recognized by the State of Utah. Upon request, the Zoning Administrator may approve modifications to the date and hours of operation.

B. All grading shall comply with standard engineering specifications for slope stabilization in accordance with the geotechnical recommendations included with the application, and all other applicable City ordinances. Slopes shall be maintained in a manner that will prevent erosion damage on adjacent properties.

C. The grading operation cannot exceed the boundary of the approved Minor Grading Plan or Engineered Grading Plan (as applicable). No grading may occur on any site for which there is no approved Minor Grading Plan, Engineered Grading Plan, or qualified exemption.

10-18B-10: HISTORIC OR PREHISTORIC RUINS:

A. No grading, filling, clearing of vegetation, operation of equipment or disturbance of the soil shall take place in areas where any historic, prehistoric ruins, monuments or objects of antiquity are present.

B. The grading plan shall indicate all such historic or prehistoric areas on the site and shall indicate the measures that will be taken to protect such areas. Should excavation uncover or discover any historic or prehistoric ruins or monuments or object of antiquity which were not known at the time of the submittal of the grading plan, all work in the immediate area shall cease until the building department shall determine what precautions should be taken to preserve the historic artifacts.

10-18B-11: ANNUAL REVIEW/EXPIRATION:

- A. The Zoning Administrator or City designee shall review approved grading permits annually from the date of approval.*
- B. Approval of a grading permit shall be valid for one (1) year from the date of approval. If the approved grading on the site is not completed within one (1) year of the date of approval, the City reserves the ability to invoke its enforcement rights as set forth in 10-18B-12.*
- C. An applicant may request a one (1) year extension prior to the expiration of the grading permit approval. The grading permit approval cannot be extended beyond a total of (5) years.*

10-18B-12: ENFORCEMENT:

- A. If an applicant/permittee fails to comply with any requirement of the approved grading plan, the Zoning Administrator or City designee shall have the right to:*
- 1. Order the applicant/permittee to cease and desist from all further grading activities.*
 - 2. Require applicant/permittee to submit a new Engineered Grading Plan or any element thereof before they are allowed to recommence grading activities.*
 - 3. Call upon the Grading Bond to accomplish completion or reclamation of the grading activities or the grading site.*
- B. A violation of this Article shall constitute a land use violation and shall be enforced according to Section 10-5-4 of this Title.*

2. REPEALER. All ordinances, resolutions and policies of the City, or parts thereof, inconsistent herewith, are hereby repealed, but only to the extent of such inconsistency and only for the period of time this Ordinance remains effective. This Repealer shall not be construed as reviving any law, order, resolution or ordinance or part thereof.

3. SEVERABILITY. Should any provision, clause or paragraph of this Ordinance or the application thereof to any person or circumstance be declared by a court of competent jurisdiction to be invalid, in whole or in part, such invalidity shall not affect the other provisions or applications of this Ordinance or the Toquerville City Code to which these amendments apply. The valid part of any provision, clause or paragraph of this Ordinance shall be given independence from the invalid provisions or applications and to this end the parts, sections and subsections of this Ordinance, together with the regulations contained therein, are hereby declared to be severable.

4. EFFECTIVENESS. This Ordinance shall become effective immediately upon approval by the City Council.

ADOPTED AND APPROVED BY THE TOQUERVILLE CITY COUNCIL this _____ day of February 2024, based upon the following vote:

Councilmember:

Wayne Olsen	AYE	_____	NAE	_____	ABSTAIN	_____	ABSENT	_____
Joey Campbell	AYE	_____	NAE	_____	ABSTAIN	_____	ABSENT	_____
John 'Chuck' Williams	AYE	_____	NAE	_____	ABSTAIN	_____	ABSENT	_____
Gary Chaves	AYE	_____	NAE	_____	ABSTAIN	_____	ABSENT	_____
Todd Sands	AYE	_____	NAE	_____	ABSTAIN	_____	ABSENT	_____

TOQUERVILLE CITY
a Utah Municipal Corporation

Attest:

Justin Sip, Toquerville City Mayor

Daisy Fuentes, Toquerville City Recorder