



Planning and Development Services

2001 S. State Street N3-600 • Salt Lake City, UT 84190-4050

Phone: (385) 468-6700 • Fax: (385) 468-6674

Town of Brighton Planning Commission

Public Meeting Agenda

Wednesday, November 15, 2023 6:00 pm

****AMENDED****

Location:

Join meeting in WebEx

Meeting number (access code): 961 841 420

<https://slco.webex.com/meet/wgurr>

Join meeting in WebEx (download available at <https://www.webex.com/downloads.html> for Windows, Android, and Apple devices)

Tap to join from a mobile device (attendees only)

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Join by phone

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Access code: 961 841 420

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Join from a video conferencing system or application

Dial wgurr@slco.webex.com

You can also dial 173.243.2.68 and enter your meeting number.

Need help? Go to <http://help.webex.com>

Anchor Location:

Big Cottonwood Fire Station

7688 South Big Cottonwood Canyon Road

*UPON REQUEST, WITH 5 WORKING DAYS NOTICE, REASONABLE ACCOMMODATIONS FOR QUALIFIED INDIVIDUALS MAY BE PROVIDED. PLEASE CONTACT WENDY GURR AT 385-468-6707.
TTY USERS SHOULD CALL 711.*

The Planning Commission Public Meeting is a public forum where, depending on the agenda item, the Planning Commission may receive comment and recommendations from applicants, the public, applicable agencies and MSD staff regarding land use applications and other items on the Commission's agenda. In addition, it is where the Planning Commission takes action on these items, which may include: approval, approval with conditions, denial, continuance, or recommendation to other bodies as applicable.

PUBLIC HEARING(S)

OAM2023-001014 - The Municipal Services District (MSD) planning staff is requesting a recommendation of an ordinance change to be made to the Town of Brighton Municipal Code section 19.88. This is a proposed amendment to the Nonconforming Uses and Noncomplying Structures chapter. **Presenter:** Morgan Julian (Motion/Voting)

BUSINESS MEETING

- 1) Approval of the October 18, 2023 Planning Commission Meeting Minutes.
(Motion/Voting)
- 2) Comprehensive Code Update Forestry Zone Chapter. The Planning Commission will discuss new chapters as part of the Title 19 Zoning in the Town of Brighton Municipal Code. The Forestry Zone Chapter regulates development standards in the FR zones. Planner: Morgan Julian (Discussion) 45 minutes
- 3) Other Business Items. (As Needed)

ADJOURN

Rules of Conduct for Planning Commission Meetings

PROCEDURE FOR PUBLIC COMMENT

1. Any person or entity may appear in person or be represented by an authorized agent at any meeting of the Commission.
2. Unless altered by the Chair, the order of the procedure on an application shall be:
 - a. The supporting agency staff will introduce the application, including staff's recommendations and a summary of pertinent written comments and reports concerning the application
 - b. The applicant will be allowed up to 15 minutes to make their presentation.
 - c. The Community Council representative can present their comments as applicable.
 - d. Where applicable, persons in favor of, or not opposed to, the application will be invited to speak.
 - e. Where applicable, persons opposing the application, in whole or in part will be invited to speak.
 - f. Where applicable, the applicant will be allowed 5 minutes to provide concluding statements.
 - g. Surrebuttals may be allowed at the discretion of the Chair.

CONDUCT FOR APPLICANTS AND THE PUBLIC

1. Speakers will be called to the podium by the Chair.
2. Each speaker, before talking, shall give his or her name and address.
3. All comments should be directed to the Commissioners, not to the staff or to members of the audience.
4. For items where there are several people wishing to speak, the Chair may impose a time limit, usually 3 minutes per person, or 5 minutes for a group spokesperson. If a time limit is imposed on any member or spokesperson of the public, then the same time limit is imposed on other members or spokespersons of the public, respectively.
5. Unless otherwise allowed by the Chair, no questions shall be asked by the speaker or Commission Members.
6. Only one speaker is permitted before the Commission at a time.
7. The discussion must be confined to essential points stated in the application bearing on the desirability or undesirability of the application.
8. The Chair may cease any presentation or information that has already been presented and acknowledge that it has been noted in the public record.
9. No personal attacks shall be indulged in by either side, and such action shall be sufficient cause for stopping the speaker from proceeding.
10. No applause or public outbursts shall be permitted.
11. The Chair or supporting agency staff may request police support to remove offending individuals who refuse to abide by these rules.
12. After the public comment portion of a meeting or hearing has concluded, the discussion will be limited to the Planning Commission and Staff.

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G R E A T E R S A L T L A K E
**Municipal Services
District**

Planning and Development Services
2001 S. State Street N3-600 • Salt Lake City, UT 84190-4050
Phone: (385) 468-6700 • Fax: (385) 468-6674
msd.utah.gov

File # OAM2023-001014

Ordinance Amendment Summary and Recommendation

Public Body: Town of Brighton Planning Commission

Meeting Date: November 15th, 2023

Proposal: An amendment to the Town of Brighton Municipal Code section 19.88. A proposed amendment to the Town of Brighton Municipal Code to repeal and replace the Nonconforming Uses and Noncomplying Structures chapter.

Planner: Morgan Julian

Recommendation: Recommend approval of the proposed ordinance

DESCRIPTION OF THE PROBLEM

The Municipal Services District (MSD) current planning staff is proposing to repeal and replace chapter 19.88- Nonconforming Uses and Noncomplying Structures of the Town of Brighton Municipal Code. The purpose of chapter 19.88 is to regulate the continued existence of nonconforming uses or noncomplying structures. The MSD staff has noted that the current chapter 19.88 is too vague and is not effective in providing guidance for residents with a nonconforming use or noncomplying structure in what they can or cannot do with such use or structure. The existing language also does not provide staff processing nonconforming use and noncomplying structure applications with sufficient clarity on interpretation of the intent of ordinance. This is particularly important as the MSD has received many building and development applications in the town's jurisdiction that pertain to noncomplying structures. It is of the MSD's view that it is pertinent to move forward with the adoption of a more robust ordinance that can be more effective in reviewing and processing these types of applications.

DESCRIPTION OF THE PROPOSED ORDINANCE

The MSD staff recommends the restructuring and reinforcing of the language in 19.88. The intent of the proposed changes is to "limit enlargement, alteration, restoration, or replacement which would increase the discrepancy between existing conditions and the developments prescribed by this Title. In addition, applications are reviewed to ensure that they are reducing the degree of nonconformity and improving the physical appearance of the structure and site through such measures as site and building design, or the improved functions of the use in relation to other uses." (Please see Attachment 1)

The proposed chapter provides more language regarding the declaration of nonconforming and noncomplying structures. Specifically, it identifies the burden of proof to be the applicants' and expands on the criteria for declaration. This chapter also provides more clarity on the continuation and abandonment of a nonconforming use. (Please see Attachment 1)

Finally, the proposed chapter allows an applicant to "lessen the degree of noncompliance", with provisions. This will be beneficial for structures that cannot feasibly come into compliance but can reduce the negative impact they have on the land. (Please see Attachment 1)

PLANNING STAFF RECOMMENDATION

Staff recommends that the Town of Brighton Planning Commission recommend approval of the attached ordinance (Attachment 1).

Attachments:

1. Proposed Ordinance

Attachment 1

TOWN OF BRIGHTON

Ordinance No. 2023-001014 Date: _____, 2023

AN ORDINANCE OF THE TOWN OF BRIGHTON COUNCIL AMENDING TITLE 19 OF MUNICIPAL CODE, PROVISIONS ON ZONING AND SUBDIVISIONS

RECITALS

WHEREAS, the Greater Salt Lake Municipal Services District provides services to the five Metro Townships in the Salt Lake Valley, unincorporated areas, and the Town of Brighton; and

WHEREAS, the Town of Brighton is a municipality and has authority to regulate zoning and subdivisions in general pursuant to Utah Code Ann. Subsection 10-3c-103 (2); and

WHEREAS, the Town of Brighton has authority to adopt zoning and subdivision regulations pursuant to Utah Code Ann. § 10-9a-501 in accordance with the Municipal Land Use, Development, and Management Act, (“MLUDMA”), Title 10, Section 9a, Utah Code, to protect public health, safety, and welfare; and

WHEREAS, the Council deems it necessary to amend its ordinances in order to ensure compliance with State Statute, encourage conformity with the Town of Brighton General Plan, promote ease of use for residents and staff, and preserve the unique character of the Town of Brighton community; and for the protection and preservation of the public health, safety and general welfare.

BE IT ORDAINED BY THE TOWN OF BRIGHTON COUNCIL as follows:

1. 19.88 repealed and replaced to read as follows:

Zoning Ordinance: The following 19.88 is hereby repealed and replaced in its entirety with the revised Title 19 attached hereto as **Attachment 1**.

2. Effective Date. This Ordinance will take effect immediately upon posting as required by law.

PASSED AND ADOPTED this ____ day of _____ 2023.

TOWN OF BRIGHTON COUNCIL

By: Dan Knopp, Mayor

ATTEST:

Kara John, Town Clerk

Voting:

Council Member Bossard	voting ____
Council Member Keigley	voting ____
Council Member Zuspan	voting ____
Council Member Knopp	voting ____
Council Member Malone	voting ____

Date ordinance summary was posted on the Utah Public Notice Website:

Effective date of ordinance: _____

SUMMARY OF
TOWN OF BRIGHTON
ORDINANCE NO. 2023-
001014

On _____, 2023, the Town of Brighton Council enacted Ordinance No. 2023-001014 that adopts new and an updated version of 19.88 (Nonconforming Uses and Noncomplying Structures) of the Town of Brighton Municipal Code and repeals and replaces its' entirety.

TOWN OF BRIGHTON COUNCIL

By: Dan Knopp, Mayor

ATTEST

APPROVED AS TO FORM:

Kara John, Town Clerk

METRO TOWNSHIP ATTORNEY

Voting:

Council Member Bossard	voting ____
Council Member Keigley	voting ____
Council Member Zuspan	voting ____
Council Member Knopp	voting ____
Council Member Malone	voting ____

A complete copy of Ordinance No. 2023-_____ is available in the office of the Town of Brighton Clerk, 7688 S. Big Cottonwood Canyon Rd., Brighton, Utah.

Chapter 19.88 Nonconforming Uses and Noncomplying Structures

19.88.010 – Purpose.

This Chapter regulates the continued existence of nonconforming uses or noncomplying structures as defined in Section 19.04. While nonconforming uses and noncomplying structures may continue, this Chapter is intended to limit enlargement, alteration, restoration, or replacement which would increase the discrepancy between existing conditions and the developments prescribed by this Title. In addition, applications are reviewed to ensure that they are reducing the degree of nonconformity and improving the physical appearance of the structure and site through such measures as site and building design, or the improved functions of the Use in relation to other uses.

19.88.020 – Determination of a Noncomplying Structure or a Nonconforming Use.

The Director or designee shall determine the nonconforming or noncomplying status of properties. As described in Utah Code 10-9a-511, the property owner shall have the burden of establishing the legal existence of a noncomplying structure or nonconforming use through substantial evidence.

- A. The Director or designee shall determine a legal nonconforming use upon finding that:
 - 1. The use legally existed before its current land use designation;
 - 2. The use has been maintained and not discontinued for one year or more since the time the land use ordinance governing the land changed; and
 - 3. Because of one or more subsequent land use ordinance changes, the use does not conform to the regulations that govern the use of the land.
- B. The Director or designee shall determine a legal noncomplying structure upon finding that:
 - 1. The structure legally existed before the structure's current land use designation; and
 - 2. Because of one or more subsequent land use ordinance changes, the structure does not conform to the regulations that now govern the use of the land.
- C. Determinations. Upon review of an application, a written determination shall be issued by the Director or designee of the non-conforming or non-complying status on a property.
- D. Appeals. Pursuant to Section 19.92.050 of this title, any person adversely affected by a final decision of the Director or designee may appeal that decision to the land use hearing officer.

19.88.030 - Continuation Of Use.

A. Continuation of a Nonconforming Use. Subject to the limitations in this section, the nonconforming use of land may continue, provided that no such nonconforming use of land can in any way expand or extend either on the same or adjoining property.

B. Continuation of a Noncomplying Structure. A Non-Complying Structure that was lawfully constructed may be used and maintained, subject to the standards and limitations of this Chapter.

19.88.040 – Abandonment or Loss of a Nonconforming Use.

- A. Abandonment of a Nonconforming Use. A nonconforming use that is discontinued for a minimum period of one (1) year is presumed abandoned and shall not thereafter be reestablished or resumed. Abandonment may also be presumed to have occurred if a majority of the primary structure associated with the nonconforming use has been voluntarily demolished without prior written approval of the municipality regarding the extension of the nonconforming use; or the primary structure associated with the nonconforming use remains vacant for a period of one (1) year.
1. Any party claiming that a nonconforming use has been abandoned shall have the burden of establishing the abandonment.
 2. After a nonconforming use has been abandoned, any subsequent use of the building, structure, or land must conform to the regulations for the zone in which it is located.
 3. "Majority" is defined as more than 50% of the square footage of the primary structure.
- B. Rebuttable Presumption of Abandonment. After abandonment has been presumed by the director or designee, the property owner may rebut the presumption of abandonment by submitting sufficient evidence that abandonment has not in fact occurred.

19.88.060 - Nonconforming Use.

- A. Expansion of Use Permitted. A nonconforming use may be extended through the same building, provided no structural alteration of the building is proposed or made for the purpose of the extension.
- B. Change of Use.
1. A nonconforming use may be changed to any use allowed in the most restrictive zone where such nonconforming use is allowed, provided the Planning Commission finds that such use would not be more intensive than the most recent existing legal nonconforming use.
 2. Any change of a nonconforming use to another nonconforming use is a conditional use and subject to the conditional use approval standards, except that the proposed nonconforming use need not conform to the adopted General Plan.
 3. As part of the change of use, structures cannot be enlarged, removed, reconstructed or otherwise altered except for interior remodeling and exterior restoration or renewal that will make the appearance of the structure more nearly conform to the character of the area in which it is located.
 4. As part of the change of use, the existing lot cannot be enlarged or modified except to create landscape, fencing, curb, gutter and sidewalk, road widening or minimum off-street parking to provide a safer and more compatible facility.

19.88.070 - Noncomplying Structure or Structure Occupied by a Nonconforming Use.

- A. Maintenance, Exterior or Interior Remodeling, or Repairs Permitted. The Owner may complete normal maintenance and incidental repair on a complying Structure that contains a Non-Conforming Use or on a Non-Complying Structure. This Section shall not be construed to authorize any violations of law nor to prevent the strengthening or restoration to a safe condition of a Structure in accordance with an order of the Building Official who declares a Structure to be unsafe and orders its restoration to a safe condition.
- B. Addition, Enlargement, Expansion. A non-complying structure shall not be added to, enlarged, or expanded in whole or in part unless the proposed change complies with all current land use regulations; including but not limited to allowances for stream setbacks under 19.72.
- C. Moving or Reconstruction at a New Location. A non-complying structure shall not be moved in whole or in part, for any distance whatsoever, to any other location on the same, or any other lot unless:
1. The proposed change will lessen the degree of the existing noncompliance and not create any new noncompliance of all or any part of the structure; or
 2. The proposed change complies with all governing land use regulations at the time of the change.
 3. For the purposes of this Chapter, “lessen the degree of existing noncompliance” means:
 - a. In the case of noncompliance with minimum height, property line setback, or yard regulations, to decrease the square footage of structure not in compliance with the height, setback, or minimum yard regulations;
 - b. In the case of stream and/or wetlands setbacks, to increase the distance from the ordinary high-water mark and/or wetlands while not increasing the area of the building (square footage of floor area) within the minimum required setback.
- D. Remodels requiring reconstruction. A noncomplying structure that has deteriorated to a state where a full demolition or construction or reconstruction of a foundation is necessary for interior or exterior remodels may be reconstructed in the same location subject to current land use regulations. The existing noncompliance may continue if the degree of noncompliance is not increased or a new violation in land use regulations is not created.
1. A noncomplying structure that has deteriorated to a condition that the structure is rendered uninhabitable may not be reconstructed, restored, or substituted, once written notice from the municipality is served to the property owner that the structure is uninhabitable and that the nonconforming use or noncomplying structure will be lost if the property owner does not apply for a land use application within one (1) year from the day in which the written notice is served.
- E. Damage or Destruction. A noncomplying structure or structure occupied by a nonconforming use that is damaged or destroyed by fire, flood, wind, earthquake or other calamity or act of God or the public enemy, and the damage is not the result of the intentional or reckless disregard of the owners or occupants, may be restored, and the occupancy or use of such structure or part thereof that existed at the time of such damage or destruction may be continued or resumed, provided that

such restoration is started within a period of one (1) year following damage or destruction, and the restoration is diligently prosecuted to completion.



Planning and Development Services

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**MEETING MINUTE SUMMARY
TOWN OF BRIGHTON PLANNING COMMISSION MEETING
Wednesday, October 18, 2023 6:00 p.m.**

Approximate meeting length: 1 hour 55 minutes

Number of public in attendance: 0

Summary Prepared by: Wendy Gurr

Meeting Conducted by: Commissioner Despain

***NOTE:** Staff Reports referenced in this document can be found on the State website, or from Planning & Development Services.

ATTENDANCE

Commissioners and Staff:

Commissioners	Public Mtg	Business Mtg	Absent
Donna Conway		x	
Don Despain (Chair)		x	
Ulrich Brunhart		x	
Tom Ward		x	
Ben Machlis (Vice Chair)			x
Phil Lanuette (Alternate)			x
John Carpenter (Alternate)		x	

Planning Staff / DA	Public Mtg	Business Mtg
Wendy Gurr		x
Jim Nakamura		x
Morgan Julian		x
Brian Tucker		x
Matt Starley		x
Cameron Platt		x

BUSINESS MEETING

Meeting began at – 6:02 p.m.

- 1) Approval of Minutes from the September 20, 2023 Planning Commission Meeting.

Motion: To approve Minutes from the September 20, 2023 Planning Commission Meeting as presented.

Motion by: Commissioner Conway

2nd by: Commissioner Brunhart

Vote: Commissioners voted unanimous in favor (of commissioners present)

Ms. Julian advised the non-conforming and non-complying uses chapters will be moving forward in the November Planning Commission Meeting.

- 2) Comprehensive Code Update Landscape and Screening and Off-street Parking and Mobility Chapters. The Planning Commission will discuss new chapters as part of the Title 19 Zoning in the Town of Brighton Municipal Code. The Landscape and Screening Chapter establishes landscaping and screening standards for new and expanded development. The Off-street Parking and Mobility establishes standards to reduce street congestion and traffic hazards in the municipality. **Planner:** Morgan Julian (Discussion) **15 minutes**

Ms. Julian provided a presentation regarding the landscaping and screening chapters. Commissioners and staff had a brief discussion regarding screening around commercial parking

lots, new development, and construction, limited commercial zoning, proposal to remove landscaping and screening chapter, focus on FCOZ standards, grading, and drainage removal,

Commissioner Carpenter and Commissioner Ward are in favor of removing the landscape and screening chapter.

Ms. Julian provided a presentation regarding Off-street Parking and Mobility Chapters. Commissioners and staff had a brief discussion regarding the use. Commissioners are good with that change. 19.48.030A.7. regarding a list of materials and surfacing, regarding requirement to pave and expanding the pavement. All-weather surface, outdoor recreation space parking, resort parking and forest service approval.

- 3) Comprehensive Code Update Planned Unit Development Chapter and Subdivision Title 18. The Planning Commission will discuss new chapters as part of the Title 19 Zoning and Title 18 Subdivision in the Town of Brighton Municipal Code. The Planned Unit Development Chapter regulates any combination of residential, commercial, and mixed uses allowed in the underlying zone. Title 18 Subdivisions regulates land that is divided, resubdivided or proposed to be divided into two or more lots, parcels, sites, units, plots, or other division of land for the purpose, whether immediate or future, for offer, sale, lease or development. **Planner: Morgan Julian (Discussion) 20 minutes**

Mr. Tucker provided a presentation regarding the subdivision ordinance. Commissioners and staff had a brief discussion regarding size of buildings, water requirements, canyon restraints clustered, agency reviews.

Planning commission notification of subdivisions and major decisions, commissioners consensus to come through the planning commission for review, health department shall receive will serve letters from water provider and wastewater for sewer.

Review timeline with review comments, applicants response and return changes, compliance by the end of next year with state code.

Ms. Julian provided a presentation on Planned Unit Developments. Commissioners and staff had a brief discussion regarding existing PUD pursuit and approval expired, PUD definition regarding open space/common area and subdivision difference, common areas preserved for natural environment. Planning commissioners consensus to come through to remove the PUD Chapter.

- 4) Comprehensive Code Update Forestry Zone Chapter. The Planning Commission will discuss new chapters as part of the Title 19 Zoning in the Town of Brighton Municipal Code. The Forestry Zone Chapter regulates development standards in the FR zones. **Planner: Morgan Julian (Discussion) 1 hour**

Ms. Julian provided a presentation regarding private right of ways. Commissioners and staff had a brief discussion regarding changing to 10 feet at the front from private right-of-way, survey requirement, prescriptive easements, identifying access, street facing garage 20 to 25 feet from the edge of the right-of-way. Planning commission proposed and consensus of 8 feet from home to the property line and 10 feet from the garage/private right-of-way.

Limiting building footprint, valve for relief on unusual properties, limitation on square footage and height, restraints on water supply, contemporary and variety of style housing, planning commission

decision in terms of LOD and square footage, limit for water to serve, LOD of 25% is reasonable and relief with considerations. Planning commission consensus was to go with option 2. Should include garage. Limiting all accessory buildings including primary residence, to no more than 4000 square feet. Table to next meeting and have public input after agreed. Challenging access to plots, granting relief of LOD during construction.

from Matt Starley to everyone: 7:36 PM

Would the limit include detached foundational structures on the lot as well. Might get a lot of large, detached garages...

from Brian Tucker (internal) to everyone: 7:37 PM

LOD would, the home footprint wouldn't.

from Matt Starley to everyone: 7:38 PM

So effectively option 2 would. Option 1 would not.

from Brian Tucker (internal) to everyone: 7:39 PM

I don't think either option restricts the outbuildings. A coverage requirement would.

from Matt Starley to everyone: 7:42 PM

Does your footprint include your garage?

from Matt Starley to everyone: 7:45 PM

Perhaps a variation on option 2 that includes all foundation supported footprints.

from Matt Starley to everyone: 7:48 PM

Perhaps replace limits of disturbance language with building pad language and allowing 5% for limit of disturbance for construction.

The screenshot shows a Webex meeting window. At the top, there's a navigation bar with 'Webex', 'Meeting Info', and 'Hide Menu Bar'. Below that is a menu with 'File', 'Edit', 'Share', 'View', 'Audio & Video', 'Participant', 'Meeting', 'Breakout Sessions', and 'Help'. The main area displays a slide with the following content:

Development Standards

Option 2- Limit Total Square Footage

Total Building Square Feet: 4,000 Square Feet (6% non-compliance)

LOD: 25% of net developable acreage for FR-0.5 and FR-1. 5% of net developable acreage for FR-20.

Definition of Total Building Square Footage to include attached garage and basement but not covered porch or covered deck.

At the bottom of the slide, it says 'Viewing Morgan Julian (internal)'s appli...' and '63%'. The bottom of the meeting window has a control bar with 'Unmute', 'Start video', and other icons.

5) Other Business Items. (As Needed)

Commissioner Ward asked about the neighborhood study and WFRC grant. Parking removed light rail.

Commissioner Despain adjourned.

MEETING ADJOURNED

Time Adjourned – 7:57 p.m.