

**CITY OF MOAB  
PLANNING COMMISSION  
PUBLIC HEARING  
PROPOSED ORDINANCE 2010-15**

The City of Moab Planning Commission will hold a Public Hearing on Thursday, July 8, 2010 at approximately 7:00 p.m. in the Council Chambers of the Moab City Offices at 217 East Center Street, Moab, Utah.

The purpose of this Public Hearing is to solicit public input on proposed Ordinance 2010-15, An Ordinance Amending the City of Moab Municipal Code, Title 17.00, Zoning, and Specifically Amending Chapter 17.12.030, Nonconforming Uses and Noncomplying Buildings.

The proposed ordinance is available for public review at the Moab City Planning Office located at 217 East Center Street and on the website at [www.moabcity.org](http://www.moabcity.org). Written public comment may be directed to the Planning Department at the listed address. To ensure that the Planning Commission has the opportunity to review written comments prior to the meeting, written comments will only be accepted until 5 pm the day prior to the public hearing.

In compliance with the Americans with Disabilities Act, individuals needing special accommodations during this meeting should notify the Planning Office at 217 East Center Street, Moab, Utah 84532; or phone (435) 259-5129 at least three (3) working days prior to the meeting.

/s/ Sommar Johnson  
Zoning Administrator

Published in the Times Independent, June 24, 2010 and July 1, 2010.

**ORDINANCE #2010-15**

**AN ORDINANCE AMENDING THE CITY OF MOAB MUNICIPAL CODE, TITLE 17.00, ZONING, AND SPECIFICALLY AMENDING CHAPTER 17.12.030, NONCONFORMING USES AND NONCOMPLYING BUILDINGS**

**WHEREAS**, the City Council (“Council”) adopted the Moab Municipal Code (“Code”) and especially Chapter 17.00.00, also known as “The Zoning Ordinance of Moab City, Utah” in an effort to encourage and facilitate orderly growth and development in the City of Moab (“City”) as well as to promote a more attractive and wholesome environment; and

**WHEREAS**, from time to time the City has determined that there is a need to amend the Code in order to make the text more contemporary and to align the language with Utah State Code; and

**WHEREAS**, the City of Moab Planning Commission (“Commission”) in a duly advertised public hearing held on July 8, 2010, to hear testimony and determine the merits of the changes to Code Chapter 17.12, General Provisions; and

**WHEREAS**, the Commission found that the proposed changes to Chapter 17.12.030, *Nonconforming uses and non complying buildings*, would benefit Planning Staff in the day to day administration of the Code; and

**WHEREAS**, the amendments to Chapter 17.12 would benefit the Planning Commission, City Council, and Appeals Authority as well as the residents of Moab City; and

**WHEREAS** the Commission unanimously voted to recommend that Council adopt the amended language and that adoption of Ordinance #2010-15 was in the best interests of the citizens of Moab; and,

**WHEREAS**, Council reviewed Ordinance #2010-15 in a regularly scheduled public meeting held on \_\_\_\_\_, 2010, to hear and decide the merits of the proposed change to Chapter 17.12.030, *Nonconforming uses and non complying buildings*, of the Moab Municipal Code; and,

**WHEREAS**, Council found that the amendments to the code are in the best interests of the City.

**NOW, THEREFORE**, the Moab City Council hereby ordains that Ordinance #2010-15 is hereby adopted to amend the Municipal Code with the following text:

**Chapter 17.12**

**GENERAL PROVISIONS**

Sections:

- 17.12.010 Intent.**
- 17.12.020 Special exceptions--Generally.**
- 17.12.030 Nonconforming uses and non complying buildings.**
- 17.12.040 Continuation and expansion.**
- 17.12.050 Damaged building restoration.**
- 17.12.060 Discontinuance or abandonment.**
- 17.12.070 Change to another nonconforming use prohibited.**
- 17.12.080 Nonconforming Lots.**

- 17.12.090 Establishment, Abandonment and Miscellaneous Requirements.**
- 17.12.100 Owner-occupied mobile home.**
- 17.12.110 Prohibition of reconstruction or restoration of a non complying structure.**
- 17.12.120 Annexations.**
- 17.12.170 Policy pertaining to flag-shaped or panhandle lots.**
- 17.12.180 Height restrictions of buildings.**

**17.12.010 Intent.**

The intent of this chapter is to accumulate provisions applying to all land and building within the incorporated area of the city into one chapter rather than to repeat them several times.

**17.12.020 Special exceptions--Generally.**

Sections 17.12.030 through 17.12.100 are to be decided by the zoning administrator with appeal to the board of adjustments. (See board of adjustments duties, Section 17.72.140, subsections B and C.)

**17.12.030 Nonconforming uses and non complying buildings.**

- A. **Applicability.** These provisions apply only to legal, nonconforming uses and non complying structures, and do not apply to illegally established nonconforming uses and non complying structures. No use may be considered a legally existing nonconforming use under the provisions of this Article if the use was never lawfully established.
- B. **Nonconforming Status.** The use of land, use of a structure, or a structure itself shall be deemed to have nonconforming status when all of the following conditions are satisfied:
  1. The use or structure does not conform to the regulations prescribed in the district in which such use or structure is located and was in existence and lawfully constructed, located and operating prior to, and at the time of, the event that made such use or structure nonconforming.
  2. The event that made such use or structure nonconforming was one of the following: annexation into the city; adoption of this code or a previous zoning ordinance, or, amendment of this code or a previous zoning ordinance.
  3. The nonconforming use or the use occupying the non complying structure has been operating since the time that the use or structure first became non complying without abandonment, as abandonment is defined in 17.12.060.

**17.12.040 Continuation and expansion.** Except as provided in this section, a nonconforming use or non complying structure may be continued by the present or a future property owner.

1. 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. Installation of solar energy devices to a building is not a structural alteration.
2. A non complying building or structure or nonconforming use of land may be continued to the same extent and character as that which legally existed on the effective

day of the applicable regulations.

3. A nonconforming structure may not expand. A nonconforming structure may be allowed to reconstruct a portion of the building subject to the conditions established in Section 17.12.040 of this code.

4. Allowed dwellings that are nonconforming as to the required minimum building square footage at the time of the adoption of this ordinance, shall be allowed to construct additions, expansions, and remodels without having to come into full compliance with the minimum square footage requirement. In any case, such addition, expansion or remodel shall in all other ways fully comply with the requirements of the zoning district.

#### **17.12.050 Damaged building restoration.**

A. The following changes or alterations may be made to a nonconforming building provided that such changes or alterations do not exceed fifty (50) percent of its assessed valuation, excluding the value of the land, for tax purposes at such date unless such building or structure is changed to a conforming use.

1. Repairs may be made to a non complying building or to a building housing a nonconforming use that has been officially declared unsafe to restore it to a safe condition. All structural alterations shall be made as required by law or as established by a health or safety official. No further expansion or change in use can be undertaken contrary to the provisions of this title unless a health or safety official, acting in his official capacity, requires such increase or expansion. Such expansions shall be limited to that which is required to comply with the minimum requirements.

2. Maintenance repairs may be made to a non-complying building to maintain an acceptable condition of a building.

3. Any structural alterations that would not increase the degree of nonconformance or which would change the use to a conforming use.

B. If a nonconforming structure or a structure occupied by a nonconforming use is destroyed by fire, the elements or other cause, it may be rebuilt to conform to the provisions of this code except as follows.

a. In the case of partial destruction of a structure occupied by a nonconforming use not exceeding fifty (50) percent of its replacement value, reconstruction may be permitted subject to the following standards:

1. The size and function of the nonconforming use shall not be expanded; and
2. Work on the restoration of the use must begin within twelve (12) months of the time of the calamity.

b. A residential structure that is destroyed fifty (50) percent or more of its replacement value) and is nonconforming only because it does not meet the minimum required dwelling unit floor area, may be reconstructed subject to the following standards:

1. The replacement residential structure may be the same size or it may be larger than the destroyed structure provided that the new structure conforms with all other requirements of the zone district; and
2. The replacement residential structure conforms to all adopted building codes, including but not limited to: currently adopted city construction codes;
3. All manufactured housing must comply with the requirements of this code.

**17.12.060 Discontinuance or abandonment.**

A. Any nonconforming use that is discontinued for, or non complying structure that remains vacant for a period of one (1) year, shall be considered to have been abandoned. Any nonconforming use that is moved from the premises shall be considered to have been abandoned.

1. Whenever a nonconforming use or a conforming use in a nonconforming structure is abandoned, all nonconforming rights shall immediately cease and the use of the premises shall henceforth conform to this code. Abandonment shall involve the actual act of discontinuance, regardless of the intent of the user or owner to discontinue a nonconforming operation.

2. A nonconforming use shall not be transferred or moved from another location unless the use will be in conformance with the zoning regulations of the zone into which it is moved.

3. No accessory use to a primary nonconforming use may continue after the primary nonconforming use has been abandoned.

**17.12.070 Change to another nonconforming use prohibited.**

4. A nonconforming use shall not be changed to another nonconforming use.

**17.12.080 Nonconforming Lots.**

(1) **General.** A single-family dwelling and customary accessory buildings may be developed on a lot that fails to meet the minimum area and width dimensions for one-family dwellings as required by the underlying zone district and was an official "lot of record" prior to January 1, 1975, if:

- a. The "lot of record" is in separate ownership or contiguous to lots in the same ownership; and
- b. The proposed single-family dwelling can be located on the lot so that the yard, height, and other dimensional requirements of the underlying zone district can be met, or a variance is obtained from said dimensional requirements pursuant to Chapter 17.72 of this code.
- c. Dwellings are permitted in the zone

(2) **Undivided Lot.** If two or more lots or combinations of contiguous lots in a single ownership (including husband and wife as, in all cases, a single owner) are of record since January 1, 1975, regardless of time of acquisition, on all or parts of the lots which do not meet the requirements established for lot width and area, the lots shall be considered an undivided parcel, and no portion shall be used or occupied which does not meet the width and area requirements of this code. Yard dimensions and other

requirements not involving area or width shall conform to the regulations of the zone in which the lot is located, except when granted a variance by the board of adjustments.

(3) Lot Reduction.

a. No lot or interest therein shall be transferred, conveyed, sold or subdivided so as to create a new nonconforming lot, to avoid, circumvent or subvert any provision of this code, or to leave remaining any lot in violation of the dimensional requirements of this code.

i. Exception. Division of small lots in Chapter 17.09.530 (21).

b. No lot or portion of a lot required as a building site under this code shall be used as a portion of a lot required as a site for another structure.

c. No building permit shall be issued for any lot or parcel of land which has been conveyed, sold, or subdivided in violation of this subsection. Any transferee who acquires a lot in violation of this subsection without knowledge of such violation, and any subsequent transferee, shall have the right pursuant to Utah law to rescind and/or receive damages from any transferor who violates the provisions of this paragraph.

**17.12.090. Establishment, Abandonment and Miscellaneous Requirements.**

A. A property owner shall have the burden of establishing the legal existence of a non complying structure or a nonconforming use.

B. The City or any party claiming a nonconforming use has been abandoned shall have the burden of establishing the abandonment. Abandonment shall be presumed to have occurred if:

1. A majority of the primary structure associated with the nonconforming use has been voluntarily demolished without prior written agreement with the City regarding an extension of the nonconforming use;
2. The nonconforming use has been discontinued for a minimum of one year;
3. The non complying primary structure associated with the nonconforming use remains vacant for a period of one year; or
4. The nonconforming use has been replaced by a conforming use.

C. The property owner may rebut the presumption of abandonment under Subsection (B) and shall have the burden of establishing that any claimed abandonment under Subsection (B) has not in fact occurred.

**17.12.100 Owner-occupied mobile home.**

A. An owner-occupied mobile home constituting a non complying building in its present location may be removed by the owner and replaced by a manufactured home within ninety days and so continue as a non complying building, providing the manufactured home replacing the one formerly removed be located within the minimum setbacks as required by the zoning district for residential use in that zoning district, and providing it is a newer model and an improvement and manufactured after June 16, 1976, in accordance with the standards adopted pursuant to the National Manufactured Housing

Construction and Safety Standards Act of 1974 and stamped approved by HUD (S 5402-6) and contains the State Insignia of Approval. Mobile homes that have existed in the city prior to the adoption of the ordinance codified in this section may be moved to another mobile home park or subdivision within the city as long as minimum safety standards and applicable laws are met and approved by the city building official.

**17.12.110 Prohibition of reconstruction or restoration of a non complying structure.**

A. In accordance with UCA 10-9a-511(3), the City may, at its discretion, prohibit the reconstruction or restoration of a non complying structure or termination of the nonconforming use of a structure if:

(1) the structure is allowed to deteriorate to a condition that the structure is rendered uninhabitable and is not repaired or restored within six months after written notice to the property owner that the structure is uninhabitable and that the non complying structure or nonconforming use will be lost if the structure is not repaired or restored within six months; or

(2) the property owner has voluntarily demolished a majority of the non complying structure or the building that houses the nonconforming use.

**AND, FURTHERMORE**, Council hereby ordains that chapter 17.06, *Definitions*, is hereby adopted to amend the Municipal Code with the addition of the following definitions:

**DEFINITIONS:**

**Non-complying structure** shall mean a building or structure that:

- 1) Legally existed before its current land use or
- 2) because of one or more subsequent land use ordinance changes, does not comply to the setback, height restrictions, or other regulations, excluding those regulations, that govern the use of land.

**Non-conforming use** shall mean a use of land that:

- 1) legally existed before its current land use designation;
- 2) has been maintained continuously since the time the land use ordinance governing the land changed; and
- 3) because of one or more subsequent land use ordinance changes, does not conform to the regulations that now govern the use of the land.

IN EFFECT IMMEDIATELY UPON PASSAGE.

PASSED AND APPROVED in open Council by a majority vote of the Governing Body of Moab City Council on \_\_\_\_\_, 2010.

SIGNED:

\_\_\_\_\_  
David L. Sakrison, Mayor

ATTEST:

\_\_\_\_\_  
Rachel Ellison, Recorder