



***TOQUERVILLE CITY
ORDINANCE 2025.XX***

AN ORDINANCE ADOPTING/DESIGNATING ANEW THE HIGHWAY COMMERCIAL ZONE DISTRICT FOR THE SUBJECT LICHFIELD PROPERTY AS REFLECTED IN THE 2024 GENERAL PLAN

RECITALS

AUTHORITY

WHEREAS, Toquerville City (“the City”) is a Utah municipal corporation and political subdivision of the State of Utah;

WHEREAS, the City is authorized pursuant to Utah Code Annotated, Title 10, Chapter 9A (the Municipal Land Use, Development and Management Act (“MLUDMA”)), to enact ordinances necessary or appropriate for the use of land and zoning districts within the City’s municipal boundaries;

WHEREAS, MLUDMA § 103(44) provides that the legislative body is Toquerville’s City Council (“City Council”);

WHEREAS, MLUDMA § 503 provides that “[o]nly a legislative body may amend: (a) the number, shape, boundaries, areas, or general uses of any zoning district; (b) any regulation of or within the zoning district; or (c) any other provision of a land use regulation”;

WHEREAS, MLUDMA § 503 further provides that “[a] legislative body may not make any amendment authorized by this section unless the legislative body first submits the amendment to the planning commission for the planning commission’s recommendation”;

WHEREAS, MLUDMA § 505 provides that the legislative body may establish zoning districts of the number, size and area that “it considers appropriate to carry out the purposes of [MLUDMA]”;

2024 GENERAL PLAN

WHEREAS, the Planning Commission by a vote of 5-0 on January 10, 2024, recommended approval of the 2024 General Plan to the City Council;

WHEREAS, the City Council by a vote of 4-1 approved the 2024 General Plan on February 7, 2024;

WHEREAS, MLUDMA § 801(5) allows the approval of a general plan to be challenged in court within 30 days of its enactment;

WHEREAS, no resident of the City timely challenged the 2024 General Plan, in whole or in part;

WHEREAS, the 2024 General Plan shows the area in **Exhibit A** hereto as Commercial (the area in **Exhibit A** will hereafter be referred to as the “Subject Lichfield Property”);

PRIOR HISTORY AND LITIGATION

WHEREAS, on the 1st day of February, 2023, the City Council, after a negative recommendation from the Planning Commission, rezoned the Subject Lichfield Property from Highway Commercial and R-1-20 to a Highway Commercial designation (the “Highway Commercial Designation”) - A copy of the current Zoning Map is attached hereto as **Exhibit B** with the Subject Lichfield Property identified therein;

WHEREAS, Raymond Bence, individually and as Trustee of the Ray and Kathy Bence Trust, dated January 12, 2001, has challenged in court the Highway Commercial Designation on the basis that City processes were not followed, including that at the time of the Highway Commercial Designation, a portion of the Subject Lichfield Property was not shown in the then General Plan as a potential commercial area;

FINDINGS

WHEREAS, MLUDMA§ 102 provides the following purposes, among others, which may be accomplished through land use regulations:

- (a) provide for the health, safety, and welfare;
- (b) promote the prosperity;
- (c) improve the . . . good order, comfort, convenience, and aesthetics of each municipality and each municipality's present and future inhabitants and businesses;
- (d) protect the tax base;
- (e) secure economy in governmental expenditures;
- ...
- ...
- ...
- (i) provide fundamental fairness in land use regulation;
- (j) facilitate orderly growth . . .; and
- (k) protect property values.

WHEREAS, the City Council acknowledges that although any land use regulation can be debated and arguments made for and against, the City Council finds that in the balance this Ordinance meets those purposes of MLUDMA identified above in at least the following ways:

- (a) the health, welfare and safety of the City is fostered by providing commercial development on or near main traffic thoroughfares;
- (b) commercial development helps add to and protect the tax base which brings prosperity to the City;
- (c) orderliness, convenience, comfort and aesthetics are promoted by providing commercial development in or near the center of the City and in an area where growth is highly likely and anticipated; and

(d) economy in government expenditures is achieved by allowing and aligning commercial activities along and near the newly constructed parkway bypass road.

WHEREAS, the City Council recognizes that the Planning Commission, though not the City Council, is bound to consider the factors in Toquerville City Code § 10-8-3, the City Council offers its opinion and believes those factors are satisfied for at least the following reasons:

1. The Highway Commercial Designation addresses a recognized and demonstrated need in the community.
2. The Highway Commercial Designation will be compatible with the character of the neighborhood and surrounding structures in use, scale, mass and circulation because the parcels subject to the Highway Commercial Designation are near Toquerville Parkway.
3. The Highway Commercial Designation will not result in an over intensive use of the land or excessive depletion of natural resources.
4. The Highway Commercial Designation will not have a material adverse effect on community capital improvement programs.
5. The Highway Commercial Designation will not require a level of community facilities and services greater than that which is available.
6. The Highway Commercial Designation will not result in undue traffic congestion and traffic hazards.
7. The Highway Commercial Designation will not cause significant air, odor, water, light or noise pollution.
8. The Highway Commercial Designation will not otherwise be detrimental to the health, safety, or welfare of the present or future inhabitants of the City; and
9. The Highway Commercial Designation meets the requirements of the 2024 General Plan, including without limitation, conformity with the General Plan.

WHEREAS, the Planning Commission reviewed and made a recommendation to the City Council for _____ of this Ordinance effectuating the same after providing proper notice and conducting a public hearing on the ___ day of ___, 2025, wherein public input was taken in compliance with Utah law and Title 10, Chapter 8 of the City Code;

WHEREAS, the adoption of this Ordinance is not an admission that the City did not follow City processes with the original Highway Commercial Designation;

WHEREAS, this Ordinance was properly noticed under MLUDMA § 205;

ORDINANCE

NOW THEREFORE, be it ordained by the City Council of Toquerville City, Utah as follows and in the following order:

1. Designation Anew of the Highway Commercial Designation. The Highway Commercial Zone for the Subject Lichfield Property is hereby adopted and designated anew and shall be shown, and continue to be shown, on the City's Official Zoning Map as Highway Commercial ("H-C").

2. Amendment of City's Official Zoning Map, if necessary. If a court were to invalidate the original Highway Commercial Designation, the City's Official Zoning Map is hereby amended and restated/redrawn to reflect the H-C zone designation for the Subject Lichfield Property.

3. 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 this Ordinance remains effective. This Repealer shall not be construed as reviving any law, order, resolution or ordinance or part thereof.

4. 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.

5. Effective Date. This Ordinance shall become effective immediately upon approval by the City Council.

ADOPTED AND APPROVED BY THE TOQUERVILLE CITY COUNCIL this ____ day of _____ 2025, based upon the following

vote: Councilmember:

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

TOQUERVILLE CITY,
a Utah municipal corporation

Attest:

Justin Sip, Toquerville City Mayor

Emily Teaters, Toquerville City Recorder

Exhibit A

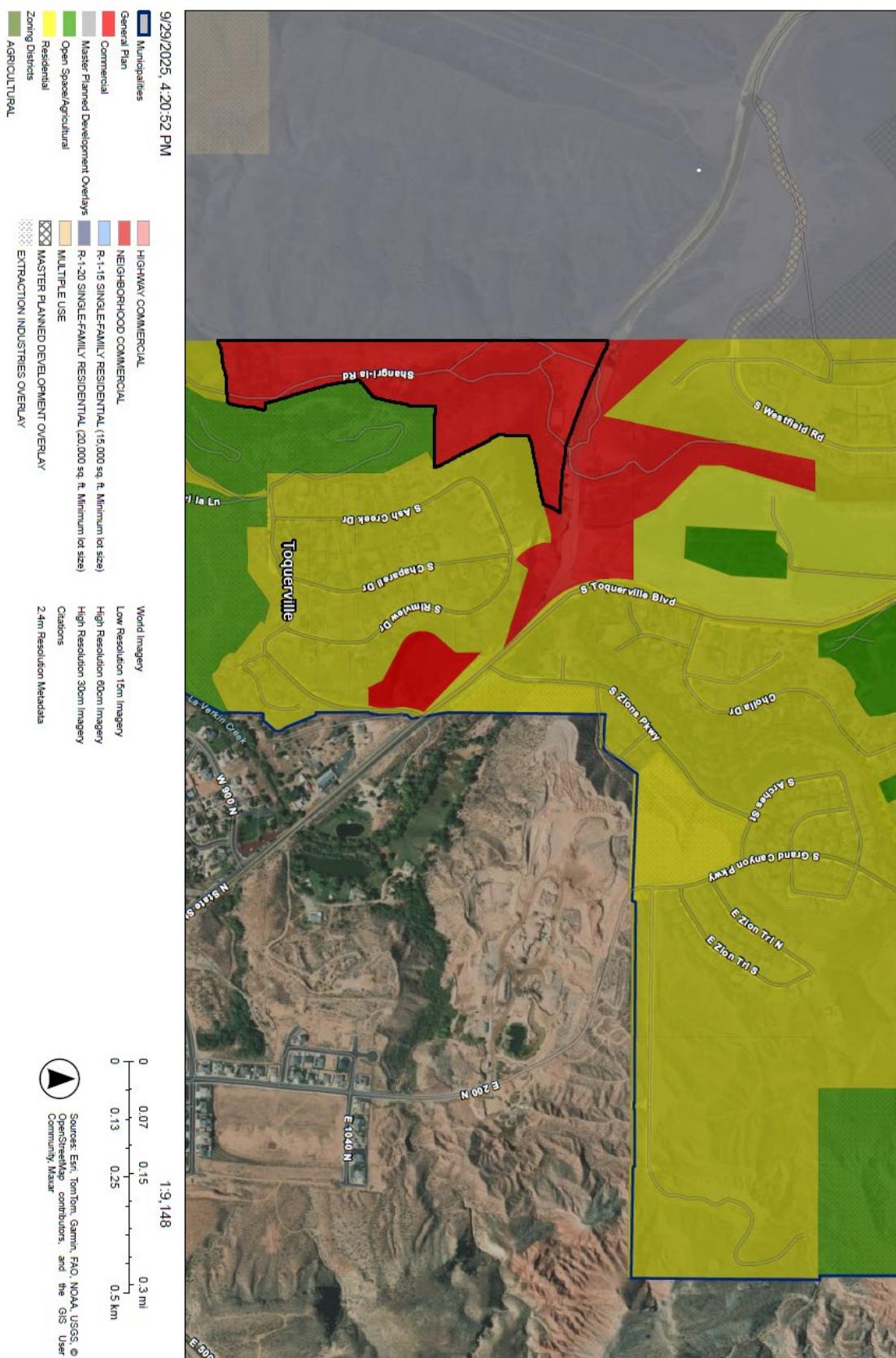


Exhibit B

