

CITY OF MOAB
PUBLIC HEARING
PROPOSED ORDINANCE #2010-13
AND #2010-15

The City of Moab will hold a Public Hearing on Tuesday, August 24, 2010 at approximately 7:15 p.m. in the Council Chambers of the Moab City Offices at 217 East Center Street, Moab, Utah.

The purpose of this hearing is to solicit public input on Proposed Ordinance #2010-13 – An Ordinance Amending the City of Moab Municipal Code, Section 17.09 and 17.70 by Establishing Standards and Conditions for Approval of Specific Conditional Uses and Proposed Ordinance #2010-15 – An Ordinance Amending the City of Moab Municipal Code, Section 17.12.030, Non-conforming Uses and Non-complying Buildings.

In compliance with the Americans with Disabilities Act, individuals needing special accommodations during this meeting should notify the Recorder's Office at 217 East Center Street, Moab, Utah 84532; or phone (435) 259-5121 at least three (3) working days prior to the meeting.

/s/ Rachel Ellison
City Recorder/Assistant City Manager

Published in the Times Independent, August 12 and 19, 2010.

ORDINANCE #2010-13

AN ORDINANCE AMENDING THE CITY OF MOAB MUNICIPAL CODE, SECTION 17.09 and 17.70 BY AMENDING THE NUMBER AND TYPES OF USES AND PROVIDING CONDITIONS AND STANDARDS FOR SPECIFIC CONDITIONAL USES

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 noticed that there is a need to amend the Code Chapters dealing with conditional use permits and that the Code is lacking concise review criteria that can be applied to individual conditional uses; and

WHEREAS, the City of Moab Planning Commission (“Commission”) in a duly advertised public hearing held on _____, __ 2010, to hear testimony and determine the merits of the changes to the Code; and

WHEREAS, the Commission found that the proposed changes would benefit Planning Staff in the day to day administration of the Code and be more easily understood by the general public; and

WHEREAS the Commission unanimously voted to recommend to Council that adoption of the new language was in the best interests of the citizens of Moab; and,

WHEREAS, Council reviewed Ordinance #2010-13 in a regularly scheduled public meeting held on _____ __, 2010, to hear and decide the merits of the proposed change to Chapter 17.09, *Definitions*, 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 adopts Ordinance #2010-13 and repeals the following Chapters in the Moab Municipal Code and holds them in reserve:

- 17.09.531 (5) Twin Homes
- 17.09.570 Conditional use--Utility buildings and structures permitted.
- 17.09.620 Conditional use--Flood protection.
- 17.09.630 Conditional use--Twin homes.
- 17.09.650 Street lighting.
- 17.70.00 Bed and Breakfast Facilities
- 17.69 Secondary Dwellings
- 15.36 Article III, Recreational Vehicle Courts, specifically chapters: 15.36.180 Intent; 15.36.190 Regulations-Generally; 15.36.200 Plan and permit regulations; 15.36.210 Development standards.

AND, FURTHERMORE, Council adopts the following table and text as an amendment to the language found in Chapter 17.09.530, Conditional Use Permits.

- (b) **Conditional Use Matrix.** The following table is a list of conditional uses in the appropriate zones. The general and specific conditions for approval for the review requirements are listed in subsection (h) of this chapter and additional review criteria are listed in Chapter 17.09.531 Conditions for approval of specific conditional uses below.

CONDITIONAL USES	R-1	R-2	R-3	R-4	RA-1	A-2	C-1	C-2	C-3	C-4	C-5	SAR	MH/RV	FC-1	RC	I
Residential uses																
Dwellings (1)										C						
Historic Residential Uses (2)									C							
Secondary dwelling Unit (3)		C	C	C	C											
Multi-family dwellings of 7 or more units (4)			C	C												
Group Home (5)	C	C	C	C	C	C										
Public services																
Utility provider structures and buildings (6)		C	C	C	C	C	C	C	C	C			C			
Agricultural uses																
Premises agricultural occupations (specifically retail with feed, seed, fertilizer, equipment and similar items) (7)					C	C										
Transportation-related uses																
Storage or Trucking Company/Terminal (8)									C	C						
Recreational and Entertainment Uses																
B&B /rooming or boarding house (9)		C	C	C												
RV /travel trailer park (10)										C					C	
RV area within a mobile home park (11)													C			
Golf Courses (12)					C	C										
RV court (13)										C			C			
Outfitters and guide services (14)															C	
Outdoor recreational uses, commercial (15)															C	
Industrial Uses																
Self storage warehouse (16)										C						
Asphalt/concrete batching plant, permanent (17)										C						
Asphalt or Concrete Batching Plant, Temporary (18)													C			C
Wireless telecommunication facilities (19)										C						C
Commercial Uses																
Drive-thru Windows (20)							C									
Large commercial and home-based day-care centers (21)		C	C	C	C	C			C		C					
Sales of Manufactured Homes (22)										C						
Land Use																
Division of small Lots (23)	C	C	C	C	C	C	C	C	C	C		C	C			

CONDITIONAL USES	R-1	R-2	R-3	R-4	RA-1	A-2	C-1	C-2	C-3	C-4	C-5	SAR	MH/RV	FC-1	RC	I
Moved buildings (24)	C	C	C	C	C	C	C	C	C	C		C	C			
Personal Service Uses																
Cemeteries, public or private (25)					C	C										
Animal pound or kennel (private) (26)					C	C	C				C					
Veterinary clinic (27)						C										
Institutional																
Schools, churches, monasteries, etc. (28)	C	C	C	C	C	C	C			C	C					

17.09.531 Conditions for approval of specific conditional uses.

(1) Dwellings in the C-4 Commercial Zone. All single-family and two-family dwellings shall be subject to the following requirements:

- a. Minimum wall dimensions of the principal structure, excluding garage, shall be twenty-four (24) feet.
- b. All principal residential structures shall:
 1. Be placed on a slab-on-grade or perimeter foundation as approved by the building department;
 2. Have a wood, brick or stucco exterior, or a material that looks similar to wood, brick or stucco;
 3. Have a minimum 4:12 roof pitch and a one (1) foot overhang (structures constructed in the traditional southwest Spanish style are exempt from this requirement);
 4. Allowed accessory structures shall not exceed 25% of the rear yard;
 5. Buffering is required in accordance with other provisions of this chapter.
 - 6.

Minimum Setbacks for Residential Structures in the C-4 Zone	
Front Yard	30 feet
Side Yard	15 feet
Rear Yard	20 feet

(2) Historic Dwellings in the C-3 Zone. Dwellings that have or may have historical significance may apply for historic designation through the review process contained in Chapter 17.90 of this code. The dwelling must satisfy the review criteria and meet the standards included in the chapter.

(3) Secondary Dwelling Unit. Secondary dwelling units are encouraged as dwellings for one or two persons as an opportunity for affordable housing of immediate family. Increasing affordable housing opportunities in the R-2, R-3, R-4 and RA-1 residential zones will benefit the community in its entirety.

A. The following provisions are intended to facilitate secondary dwellings while minimizing land use conflicts and environmental degradation.

- a. Secondary dwellings shall not occupy more than twenty-five percent of the rear yard.
- b. The secondary dwelling shall be setback at least twelve feet from the rear of the main dwelling and adhere to the required setbacks of the underlying zone.
- c. Any request for secondary living quarters within residential zones shall be reviewed and approved by the planning commission upon recommendation of the zoning administrator.

d. A secondary dwelling shall not be constructed prior to the principal structure.

B. The following criteria must be established prior to building permit issuance:

- a. Size. The maximum size for secondary living quarters shall be no more than seven hundred square feet with no more than one bedroom.
- b. Parking. One on-site parking space shall be provided in addition to the underlying parking requirement. The parking space may be provided in tandem if the existing driveway length exceeds thirty-five feet as measured from the property line. No parking shall be permitted in the front setback area.
- c. Secondary Dwellings Per Lot. No more than one secondary dwelling may be located on a lot.
- d. Property to Remain Undivided. Properties with secondary dwelling permits shall remain recorded as one lot.
- e. Maximum Occupancy. The maximum occupancy of the secondary dwelling shall be no more than two.
- f. No Separate Leases. The owner of the property shall occupy one unit. The secondary dwelling shall not be sold separately.
- g. Deed Restriction. A deed restriction must be filed with the county recorder which states:

A permit for a secondary dwelling was issued to _____, the current owner of this property on _____. This permit does not run with the land and is automatically invalidated by the sale or transfer of this property. Prospective purchasers should be advised that only one unit on the property may be rented; the other must be occupied by the owner. Prospective purchasers who intend to reside in one of the units on the property may apply to the Planning Department for a secondary dwelling permit. If all of the conditions required by zoning have continually been met, a new permit will typically be granted. The owner shall strictly adhere to the prohibition of the use of the secondary dwelling as nightly or short-term rental.

- h. Nightly Rentals. Secondary dwellings are intended for long-term rental of six consecutive months or more, to the same individual, and may not be used for nightly rentals.

C. The permit for secondary dwellings may be subject to a yearly review by the zoning administrator. The review shall occur one year after issuance of the secondary dwelling permit. The zoning administrator may revoke the secondary dwelling permit for noncompliance with the criteria of this chapter. The permittee may appeal the determination to the board of adjustment, which will evaluate the zoning administrator's determination of noncompliance and decide if the permit revocation should occur.

(4) Multi-family dwellings of 7 or more units. All multi-family development of seven or more units shall be subject to the following requirements:

- a. Access. Vehicular access shall be provided to the property in such a way that it does not impeded traffic patterns on adjacent streets.

- b. *Parking.* Off-street parking shall be designed in such a way as to allow vehicles to pull forward into the on-street traffic flow.
- c. *Garages or carports.* If provided, garages and carports shall not be located in the front yard and shall be setback from the front wall of the principal structure at least fifteen (15) feet or be accessed from the rear or side of the property.
- d. *Landscaping.* All off-street parking shall be landscaped and buffered from adjacent uses. A minimum of 15% of the interior of the parking area shall be landscaped to provide shade and break up the expanse of asphalt.
- e. *Buffering.* All adjacent uses shall be buffered by a distance of not less than fifteen (15) feet and contain berms, shrubs, and other plantings. Buffering may be combined with screens, fences and hedges.
- f. *Open space.* Required open space/recreation areas shall be provided in accordance with Chapter 17.

(5) Group Home. A group home may provide living arrangements for not more than eight (8) residents per home sixty years of age or older; or for persons in alcohol recovery, halfway house or other similar programs; or for the developmentally disabled, limited to cerebral palsy, multiple sclerosis, mental retardation, autism, and epilepsy; and not more than two (2) supervisory personnel; subject to the following conditions:

- a. Such homes must be state-licensed.
- b. All exterior aspects of a group home, including its scale and off-street parking configuration, shall not disrupt the residential character of the area.
- c. In no case shall the total number of persons residing on premises (including staff) be more than one (1) per four hundred (400) square feet of usable floor area (20% more than the single family equivalent).
- d. Such homes shall provide off-street parking pursuant to Sections 17.09.210- 17.09.340 of this code.

(6) Utility provider structures and buildings. New construction of water lines, sewer lines and electric substations and structures may be constructed in all zones subject to the approval of the Planning Commission and Council with a review of a subdivision plat. Such construction is not required to apply for a separate permit but must satisfy the requirements below. When expansion of existing facilities and construction of new facilities in developed neighborhoods are proposed, an application for a conditional use permit shall be required. The Planning Commission may require conditions in accordance with the following language that are reasonably necessary to protect surrounding property values and residential amenities.

A. These types of facilities include but are not limited to:

- 1. Electrical utility facility, provided transmission lines are excluded from the requirements of this section if visibility is essential to safety, security, or maintenance access.
- 2. Solid waste disposal facility
- 3. Water pumping plants and pipelines,
- 4. Public utility buildings and structures (except power plants),
- 5. Flood control structures,
- 6. Substations,
- 7. Sewage treatment plants subject to review and approval of the State Department of Health

B. Site standards:

- 1. *Architectural form and character.* A building housing all or a majority of a utility facility must be compatible with the architectural form of surrounding buildings. This requirement is not

applicable to a utility facility where significant elements of the facility are not housed inside of a building or to isolate minor elements such as pad mounted transformers, telephone pedestals and metering stations.

2. *Screening and Fence requirements.* A utility facility must be site screened with landscaping and/or fencing. Landscape development, shall include retention of significant trees, as necessary to maintain and protect property values, enhance the visual appearance of the City, to preserve the natural character of the area, to promote utilization of natural systems, to reduce the impacts of development on the storm drainage system and water resources, and to provide a better transition between the various land uses permitted in the City.

a. The Planning Department and Community Development Director shall review the proposed landscape plan with each application and make a recommendation to the Planning Commission.

b. The applicant shall provide site perimeter landscaping that shall consist of a minimum width of ten (10) feet and include:

1. Evergreen and deciduous trees, with no more than 50 percent being deciduous, a minimum of six feet in height, and planted at intervals no greater than 30 feet on center;
2. A minimum of three and one-half feet in height, and living ground cover planted so that the ground will be covered within three years

c. If planted to buffer a parking area, access, or site development other than a building, any of the following alternatives may be used unless otherwise noted:

1. Shrubs, a minimum of three and one-half feet in height and living ground cover must be planted so that the ground will be covered within three years.
2. Earth-mounding, an average of three and one-half feet in height, planted with shrubs or living ground cover so that the ground will be covered within three years. This alternative may not be used in a Downtown Land Use District.
3. A combination of earth-mounding and shrubs to produce a visual barrier at least three and one-half feet in height.

d. Equipment and vehicle storage yards require 15 feet of landscaping on all sides if visible from a public right-of-way.

e. *Parking Area Landscaping.* Parking areas require landscaping as follows in addition to any site perimeter landscaping as required

f. Alternative landscaping may be approved by the Planning Commission if the landscaping will provide the desired screening as noted below:

1. The proposed landscaping represents an equal or better result than that which could be achieved by strictly following the requirements of this section; and

2. The proposed landscaping either:

- a. Incorporates the increased retention of significant trees and naturally occurring undergrowth; or

- b. Better accommodates or improves the existing physical conditions of the subject property; or
- c. Incorporates elements to provide for wind protection or to maintain solar access; or
- d. Incorporates elements to protect or improve water quality; or
- e. Incorporates native species in a design that buffers a critical area from uses on the site, including parking.

(7) Premises agricultural occupations. This type of occupation specifically concerns the retail sale of feed, seed, fertilizer, equipment and similar items used in agriculture. The following standards shall be met for this type of business.

- a. Parking areas shall be an all-weather surface such as concrete, asphalt or sealed gravel that will not generate dust or deposit gravel on paved roadways.
- b. Hours of operation shall be confined to 7am to 7pm or established by resolution of the Planning Commission.
- c. Dust, glare, odor, and noise shall be confined within the boundaries of the property.
- d. All signs shall comply with the sign regulations of Chapter 15.44 and shall not exceed fifteen (15) square feet.
- e. Outside storage of products for sale is limited to hours of operation.

(8) Trucking Company/Terminal.

- a. Parking areas shall be paved with an all-weather hard surface such as concrete or asphalt that will not generate dust or gravel deposits on paved roadways.
- b. A minimum of fifteen (15) percent of the parking area shall be landscaped with:
 - i. Shrubs, a minimum of three and one-half feet in height and living ground cover must be planted so that the ground will be covered within three years.
 - ii. Earth-mounding, an average of three and one-half feet in height, planted with trees, shrubs or living ground cover so that the ground will be covered within three years. A combination of earth-mounding and shrubs to produce a visual barrier at least three and one-half feet in height.
 - iii. Evergreen and deciduous trees, with no more than 50 percent being deciduous, a minimum of six feet in height, and planted at intervals no greater than 30 feet on center;
- c. Odor, glare, and noise shall be confined to the property.
- d. Adjacent properties shall be buffered by perimeter landscaping a minimum of fifteen (15) feet in width.
- e. Parking areas shall be illuminated by pole lighting only that shall be downward directed with full cut-off fixtures dispersed throughout the parking area and shall provide a minimum of .5 candle power and not more than 1.0 candle power of illumination. No light shall be placed on the eave or side of buildings and be directed outward toward the perimeter of the property.
- f. Adequate access/ingress shall be provided so as not to impact traffic patterns in the area
- g. Refrigerator units shall not be allowed to run from the hours of 10:00 pm to 7:00 am.

(9) Bed and breakfast, rooming or boarding house.

A. All such uses shall comply with the following preconditions.

1. Bed and breakfast facilities, rooming and/or boarding houses may be allowed as a conditional use permit where applicant can show evidence of compliance with outlined standards and procedures and where there is clearly minimal negative impact on adjacent residential properties and neighborhoods. An inspection by the building inspector, fire chief and health department shall be required prior to the issuance of a permit and as often as necessary for enforcement of this chapter. No person shall

operate a bed and breakfast unless the person holds a valid permit and business license. For purposes of obtaining a conditional use permit, rooming and/or boarding houses shall abide by the same regulations as a bed and breakfast facility.

2. A letter of application sworn before a notary public shall be provided by the owner(s) stating that such owner will occupy the facility, as provided for herein. The letter shall be recorded by the city recorder with a certified copy to accompany the application. The letter shall also be submitted to the planning commission for its consideration.

3. The conditional use permit for a bed and breakfast facility shall be granted annually from the date of the original permit. At the end of the one-year period, renewal shall be granted by the planning commission if all other conditions required at the time of approval remain unchanged.

4. A change in ownership as defined herein will require a new conditional use permit.

5. Applicant must provide plot plans and building or floor plans one-quarter inch to the foot showing the bed and breakfast facility, parking and landscaping. Applicant must show that the facility meets minimum performance standards for off-street parking and landscaping as specified in Section 17.70.080(B). Plans shall be approved by the building inspector, zoning administrator, fire chief and health department.

6. Applicant must complete the bed and breakfast home occupation form in order to complete the conditional use permit application process.

B. Requirements.

1. The bed and breakfast facility shall not unduly increase local traffic in the immediate neighborhood. Road design and access shall be considered in the planning commission's recommendation. Construction and alterations of bed and breakfast facilities shall not alter the residential character of residential zones and of the dwelling.

2. The parcel shall also be of sufficient size to be in scale with the number of people using the facility. All bed and breakfast rentals must provide adequate parking (required one off-street parking space per rental bedroom) in addition to needed parking for owners of the facility, have a maximum thirty-day stay, and meals shall be served to guests only (bed and breakfast: zoning R2, R3, R4).

3. All units shall have a parcel to finished dwelling unit ratio that exceeds five to one (or no dwelling unit in excess of twenty percent of the total parcel size area).

4. No bed and breakfast facility shall rent for compensation more than seven rooms, except that suites that do not use a public corridor or passageway between suite bedroom areas shall be counted as one room.

5. No bed and breakfast facility shall allow more than two adults in any rental room unless the bedroom square footage is larger than three hundred square feet and does not use a public corridor or passageway between suite bedroom areas.

6. Signs are limited to one nonflashing sign not larger in area than two hundred twenty-six square inches. If lighted, the light shall be defused or shielded.

7. All bed and breakfast facilities shall pay water and sewer rates according to the rate formulas contained in Sections 13.24.010 and 13.24.020.

8. All bed and breakfasts must collect and pay an applicable transient room tax, sales tax and city gross business license fee.

9. The bed and breakfast facility shall conform to fire, building and health codes and be licensed in conformance with all city ordinances. Any other appropriate or more stringent conditions deemed necessary for bed and breakfast facilities protecting public health, safety, welfare and the residential character of residential zones may be required by the planning commission.

C. Appeals. Approval or disapproval of a bed and breakfast application by the planning commission can be appealed to the board of adjustments within ten days of planning commission action.

(10) Recreational vehicle/travel trailer park or court. The following provisions are intended to manage the development of RV parks while minimizing land use conflicts and environmental degradation:

- a. Trees and other landscaping serving as a buffer to other adjacent uses must surround the area for a minimum distance of fifteen (15) feet. Landscaping shall be in accordance with the requirements of Code Chapter 17.09.360.
- b. A solid decorative privacy wall or wooden privacy fence shall be constructed and maintained around the park perimeter.
- c. A minimum separation of twenty (20) feet shall be maintained between each RV unit.
- d. Adequate sanitation facilities and HC facilities shall be provided and maintained for the maximum number of units as per the International Building Code Appendices.
- e. A minimum area of 10% or 500 square feet, whichever is greater, must be provided as open space for a playground and/or picnic area.
- f. Traffic patterns within the park and ingress and egress from adjacent streets shall be designed to minimize congestion at all intersections.
- g. Hours of operation shall be limited to 6:00 am to 10:00 pm for the office and other park facilities or be established by resolution of the Planning Commission.
- h. Conditions of Approval. Both the planning commission and city council shall use the following criteria in reviewing conditional use permit requests as well as the specific conditions for each type of conditional use listed in the matrix in section b, above. It is specifically understood that certain criteria listed below may not apply to a particular application and that failure to meet one or more of the applicable criteria may be cause for denial. The applicant shall adequately demonstrate that the criteria have been met.

(11) RV area within a mobile home park. All parks shall meet the following conditions:

- a. Must be located along a perimeter of the park
- b. Access shall not be through the park
- c. Trees and other landscaping serving as a buffer to residential uses must surround the area for a minimum distance of fifteen (15) feet.
- d. A solid decorative privacy wall or wooden privacy fence shall be constructed and maintained around the RV area.
- e. A minimum separation of twenty (20) feet shall be maintained between each RV unit
- f. Adequate sanitation facilities and HC facilities shall be provided and maintained for the maximum number of units as per the International Building Code Appendices.
- g. A minimum area of 10% or 500 square feet, whichever is greater, that is located within the RV area must be provided as open space for a playground and/or picnic area.
- i. Appeals

(12) Golf Courses. Must contain a minimum of ten acres and a golf club house may be permitted when part of an approved site plan. The plan must address the following conditions:

- a. Golf course designs shall implement nonpoint source pollution best management practices (BMPs).

- b. Course designs and best management plans shall be submitted to the Moab City Planning Department for review and referral to the Planning Commission for comment and approval before golf course construction can begin.
- c. Course designs must show that there are no encroachments into areas restricted from development and to minimize the impact of the overall site development on natural resources of the area. The design must meet the requirements of Chapter 17.09.660, *Site Plan Required*, and contain the following supplemental information:
- i. Address stream, wetland, and habitat protection
 - ii. Contain an environmental constraints analysis that includes the existing environmental conditions on the site and a report with plans that provide:
 - Field located streams, ponds or other water bodies, name of watershed and sub-watershed and Stream Use Class designation,
 - Field located wetlands including documentation of vegetation, soils, and hydrology,
 - Wetlands classifications (Cowardin; National Vegetation Classification Standard for wetlands),
 - Calculated 100-year floodplain,
 - Topography with slopes differentiated as 1-25%, 26-39%, 40-45%, and 46%+,
 - Existing land cover (e.g., forest, meadow, old field, etc.).
 - Location of significant plant and/or animal habitat including: documentation of species, date of last known siting, status, and source of documentation.
- d. Application of Regulations and Policies. After verification of the existing environmental conditions by the U.S. Army Corps of Engineers or other federal agency, the applicant will identify on the plan those areas of the site that would be restricted from development by: 1) denoting buffer boundaries, 2) denoting those areas of significant habitat determined to exist on site that will be preserved, and 3) denoting those existing areas that will be preserved.
- e. Design Standards for Preliminary Plan. After the applicant has determined the areas restricted from development, a plan should be prepared for submission to the Planning Commission that shows the proposed lay-out of the golf course. The plan shall include the following:
1. Tees, greens, fairways, and practice range;
 2. Buildings (e.g., clubhouse, maintenance facilities, etc.);
 3. Roads, cart paths, and parking lots
 4. Conceptual design for the management of storm water runoff and water quality including locations and methods and documentation that these locations and methods are practical; and
 5. Location of irrigation wells and/or ponds.
- f. Approval of Encroachments. If any of the above facilities would require encroachment on buffers, streams, wetlands or floodplains, approval must be granted by the U.S. Army Corps of Engineers or other federal agency.

(13) Recreational vehicle court. These regulations are intended to establish minimum standards that are designed to facilitate the development of safe and sanitary accommodations for short-term occupants. All recreational vehicle courts constructed or enlarged within the city shall be located only in zones in which they are listed as a permitted use under the terms of Title 17, *Zoning*, and shall conform to the requirements and standards set out below.

A. Permit required. Any person wishing to construct a recreational vehicle court shall prepare a plan and submit the same to the zoning administrator. No construction connected with such recreational vehicle court shall be commenced until a valid permit has been obtained. Before a permit can be issued for any construction connected with a recreational vehicle court, the plans must be approved by the planning commission as set forth below:

B. Site Plan Required. Such plans shall show the information required for site plans in accordance with Section 17.09.660.

C. Development standards.

1. The area shall be held and remain under single ownership. The property shall not be subdivided unless the development and subdivision is approved as a master planned development and complies with the provisions of Chapter 17.65. Not less than twenty-five (25) percent of the gross area of the recreation vehicle court shall be developed into a park or play space for the common use of the occupants. The land covered by vehicular roadways, sidewalks, parking spaces and landscaped areas surrounding recreational vehicle spaces which are pertinent to each space, and the area devoted to service facilities shall not be construed as being part of the area required for parks and playgrounds. An open space easement covering all common area restricting the use of the land contained therein against future building or use, except that which is in accordance with an approved amended plan, shall be conveyed to the city as part of the documentation.

2. The plan must be prepared by an engineer, land surveyor, architect or landscape architect licensed to practice in the state.

3. Yard Lighting. A minimum to two-tenths footcandles of light shall be required for protective yard lighting the full length of all driveways and walkways.

4. All roadways shall be hard-surfaced.

5. All recreational vehicle courts shall abut upon a collector or arterial street as set forth in the master plan of the city.

6. All entrances and exits from the recreational vehicle court shall be by forward motion only.

7. No exit or entrance from a recreational vehicle court shall be through a residential zone.

8. All one-way roads shall be at least sixteen feet in width and all two-way roadways shall be at least twenty-four feet in width.

9. All recreational vehicle spaces shall be located at least twenty feet back from the right-of-way line at any public street and the resulting setback space must be landscaped with lawn and trees or shrubs as approved by the building inspector.

10. All areas within the court which are not hard-surfaced shall be landscaped and maintained with lawns, trees and shrubs designed to provide privacy and noise containment, and shall be equipped with adequate sprinkling devices as determined by the building inspector.

11. Each recreational vehicle space shall be at least twenty feet in width and at least forty feet in length.

12. All recreational vehicles shall be served by a water system, a sewage disposal system, and a solid waste disposal system and solid waste disposal facilities which have been approved by the State Health Department.

13. In addition to meeting the above requirements, all recreational vehicle courts shall conform to the requirements set forth in the Code of Camp, Trailer Court, Hotel, Motel and Resort Sanitation Requirements as adopted by the Utah State Board of Health and shall also conform to the Fire Code, which codes have been adopted by the city.

14. All recreational vehicle courts shall be maintained in a tidy and sanitary condition, free, at all times, from debris, trash and deleterious objects and structures.

15. Prerequisite to the occupancy of any recreational vehicle court shall be the obtaining of an annual license, which shall be issued only after inspection by the building inspector. It is unlawful to operate a recreational vehicle court without first obtaining a license and such license shall be refused or revoked upon failure of the owner and/or operator to maintain the park in accordance with the standards and requirements as herein set forth.

(14) Outfitters guide services and facilities. All such uses shall satisfy the requirements of this chapter as well as address the following standards to the satisfaction of the Planning Commission :

1. Storage of equipment must be contained indoors except for boats, rafts, canoes and other watercraft.
2. Adequate off-street parking must be provided
3. Noise, glare, and odors shall be contained within the boundaries of the property.
4. All fencing and parking areas shall be maintained in an appealing manner.
5. Landscaping shall be provided in accordance with the requirements of Chapter 17.09.360 (Landscaping--Required) and 17.09.370 (Landscaping--Specifications).
6. Landscaping screening shall be provided and maintained along the perimeter of the property and consist of 20 feet in depth. Vegetation may include existing trees and shrubs but weeds must be managed and landscaping maintained once it is installed.
7. All structures shall be maintained in accordance with the adopted version of the International Property Maintenance Code.
8. Hours of operation shall be established by resolution of the Planning Commission

(15) Outdoor recreational uses, commercial.

1. Adequate off-street parking must be provided
2. Noise, glare, and odors shall be contained within the boundaries of the property.
3. All fencing and parking areas shall be maintained in an appealing manner.
4. Landscaping shall be provided in accordance with the requirements of Chapter 17.09.360 (Landscaping--Required) and 17.09.370 (Landscaping--Specifications).

5. Landscaping screening shall be provided and maintained along the perimeter of the property and consist of 20 feet in depth. Vegetation may include existing trees and shrubs but weeds must be managed and landscaping maintained once it is installed. Landscaping options may be
6. All structures shall be maintained in accordance with the adopted version of the International Property Maintenance Code.
7. Hours of operation shall be established by resolution of the Planning Commission

(16) Self storage warehouse.

1. All new self-storage warehouse facilities or expansions are subject to approval of a site plan as described in Code Chapter 17.09.660, *Site plan—Required*.
2. All drives and parking area surfaces shall consist of a maintained all-weather dust free surface such as asphalt, concrete, bricks, pavers or cobblestones. The use of gravel may be exercised but a dust inhibitor shall be regularly applied to the surface and appropriately worked into the surface material.
3. Drive lanes must be of a sufficient width to allow vehicles to pass when another is loading or unloading by a unit.
4. Traffic impacts shall be mitigated and not lead to disruption of traffic flow on adjacent streets.
5. Self storage warehouses shall be screened/buffered from adjacent properties by the use of decorative/solid wooden privacy fencing or decorative block walls. High quality landscaping may be incorporated into the screening effort but maintenance of all vegetation is the responsibility of the owner(s) of the property.
6. Glare, dust, odor, and noise must be contained within the property boundaries.
7. Landscaping shall be provided in accordance with the requirements of Chapter 17.09.360 (Landscaping--Required) and 17.09.370 (Landscaping--Specifications). Landscaping screening shall be provided and maintained along the perimeter of the property and consist of 20 feet in depth. Vegetation may include existing trees and shrubs but weeds must be managed and landscaping maintained once it is installed.
8. All structures shall be maintained in accordance with the adopted version of the International Property Maintenance Code.
9. The lot size shall be between a minimum of 2 acres and a maximum of 5 acres.
10. The total area covered by buildings shall not exceed 50 percent of the site.
11. The maximum height of the building or buildings permitted as of right is 20 feet or one story. Additional height may be allowed by resolution of the Planning Commission.
12. No outside storage is permitted except for large vehicles and boats that are under a permanent cover.
13. The storage of hazardous, toxic, or explosive substances, including, but not limited to, but excluding the storage of, hazardous waste, industrial solid waste, medical waste, municipal solid waste, septage, or used oil, is prohibited.
14. No business activity other than the rental of storage units shall be conducted on the premises.
15. One dwelling unit is permitted on the same lot for use as a caretaker dwelling.

(17) Asphalt/concrete batching plant, permanent

1. Hours of operation 5:00 am to 9:00 pm or restricted by resolution of the Planning Commission
2. Traffic impacts- drive entries must be designed to minimize impeding traffic in lanes of travel on adjacent streets
3. Odor, noise, and glare must be contained within the boundaries of the property
4. Landscaping Screening shall be provided and maintained along the perimeter of the property and consist of 20 feet in depth. Vegetation may include existing trees and shrubs but weeds must be managed and landscaping maintained once it is installed.
5. All parking areas shall consist of a dust free durable surface. The use of gravel may be exercised but a dust inhibitor shall be applied to the surface and appropriately worked into the surface material.
6. Dust- Appropriate mechanical devices shall be in place to minimize the release of dust and cement and fly ash particles or other nuisance material from the batching and stockpile areas.

(18) Asphalt or Concrete Batching Plant, Temporary. A temporary asphalt or concrete batch plant permit may be approved by the zoning administrator for producing asphalt or concrete products used in construction activities on the same or nearby sites subject to the following conditions.

- a. The batching plant site shall comply with all applicable provisions of city, state and federal laws.
- b. The batch plant shall not be located within six-hundred feet (600') of a residence.
- c. Hours of operation will be limited to Monday through Friday, 7 a.m. to 7 p.m.
- d. The batch plant permit will be valid for up to six (6) months with a single renewal of a six (6) month time period by the Zoning Administrator. Subsequent time periods may be approved only through review by the Planning Commission.
- e. No portion of the batch plant or its operation shall be located on a public street.
- f. The batch plant shall only furnish concrete, asphalt, or both, to a specific project. The placement of a temporary batching plant for a private project is restricted to the site of the project.
- g. The site must be clear of all equipment, material and debris upon completion.
- h. All public improvements that are damaged during the operation of the temporary batching plant must be repaired or replaced within thirty (30) days of completion of the project.
- i. At termination and/or removal of plant permit, permittee shall have the person responsible walk the site with the building official or his/her designee to verify the site meets city approval.

(19) Wireless Telecommunication Towers. All wireless telecommunications facilities shall only be allowed in areas zoned I-1, C-4 or on city, county or school district owned property located in areas found to be aesthetically appropriate and suitable as approved by the planning commission and city council. Council shall base their approval, denial, or approval with conditions on the recommendations of the public works director, zoning administrator, and city planner. The regulations and standards for the construction, erection or placement of all wireless telecommunications towers within the jurisdiction of the city are found in Code Chapter 17.76.

(20) Drive-thru Windows. Proposed drive-thru windows shall be evaluated using the following standards.

1. The drive-thru use shall not interfere with traffic circulation to and from the building site
2. The drive-thru use shall not hinder the use of available parking areas or access to parking areas
3. The drive-thru use shall utilize additional landscaping, soil berms, and/or fencing as required to serve as a buffer for light and/or noise
4. Design features shall be incorporated for the sufficient protection of adjacent uses from adverse impacts including noise, vibration, smoke, fumes, gas, dust, odor, lighting, glare, traffic minimization or circulation, parking issues, or other undesirable or hazardous conditions.
5. Provisions for proper maintenance of the drive areas, lighting, signage, landscaping, etc. shall be provided.
6. The drive-thru window shall be operated only during approved business hours
7. The applicant must demonstrate that site impacts within the property as well as adjoining properties have been fully mitigated appropriate to the topography of the site. The review of impacts include, at a minimum, slope retention, flood potential, and possible damage to riparian or hillside areas.

(21) Large commercial and home-based day-care centers. Large home based facility serves eight to sixteen persons in accordance with state rules and shall be permitted to operate between the hours of 5:00 a.m. to 9:00 p.m. daily or as approved by a conditional use permit. A commercial facility is a stand-alone facility not attached to a residence.

- a. Proof of a state license is required as part of the approval.

- b. Applicants shall submit a conceptual site plan that indicates:
 - i. Ingress and egress to the property,
 - ii. drop off/pick up areas
 - iii. Traffic circulation
 - iv. Off-street parking
 - v. Landscaping
 - vi. Buffering or separation from dissimilar uses
 - vii. Open space for older kids
- c. Hours of operation shall be between 5:00 am until 9:00 pm or as restricted by resolution of the Planning Commission.
- d. Odor, noise, and glare shall be restricted to the property.
- e. Landscaping shall be provided in accordance with the requirements of Chapter 17.09.360 (Landscaping--Required) and 17.09.370 (Landscaping--Specifications).

(22) *Manufactured Home Sales.* The following additional items shall be used during review of applications for this use in an effort to mitigate impacts from the sales of factory built structures:

- a. Additional perimeter landscaping in compliance with the requirements of Chapter 17.09.360 (Landscaping--Required) and 17.09.370 (Landscaping--Specifications) shall include berms, screening, and fencing,
- b. Increased setbacks from property lines may be required when adjacent to dissimilar uses,
- c. Hours of operation shall be 8:00 am to 7:00 pm, or as established by resolution of the Planning Commission.
- d. Storm water management plan is required to be submitted for review by the City Public Works Director and City Engineer,
- e. Permanent structures shall express architectural compatibility with surrounding buildings in terms of appearance, scale and features, site design and scope,
- f. Potentially adverse impacts from noise, vibration, smoke, fumes, gas, dust, odor, lighting, glare, shall be contained within the property boundaries,
- g. Traffic impacts on surrounding streets shall be minimized,
- h. Sufficient paved parking shall be provided in accordance with this code.

(23) *Division of Undersized Lots* (Not to be confused with Chapter 17.12.110, *Nonconforming lots of record*.) Where a parcel of land at the time of the adoption of the ordinance codified in this title is at least one and eight-tenths times as large in area as required for a lot in the zone, the planning commission may permit the division of a parcel into two lots, provided:

- a. Such division will not cause undue concentration of buildings;
- b. The characteristics of the zone in which the lot is located will be maintained;
- c. In the opinion of the planning commission, values in the area will be safeguarded.

(24) *Moved buildings.* No building shall be moved within the city which building has had prior use, without an application being filed with the Zoning Administrator.

A. Such application shall contain the following information:

- i. Location and address of the old and new site;
- ii. Plot plan of the new location, also showing adjacent lots on all sides of the property and indicating all structures and improvements on such lots;
- iii. Plans and specifications for the proposed improvements at the new locations, including plans for landscaping treatment when required by the zoning administrator;
- iv. Certification by the building inspector that the structure is sound enough to be moved and that the condition, location and use of the building will comply with the zoning ordinance and all other applicable codes and ordinances.

- B. The application must then be reviewed by the planning commission who will forward a recommendation of approval or denial to Council. Before approving such application and authorizing the issuance of a permit, the city council shall consider the recommendation of the Planning Commission and must find:
- i. That the building will have no appreciable detrimental effect on the living environment and property values in the area into which the structure is to be moved;
 - ii. That the building is in conformity with the quality of buildings existing in the area into which it is proposed to be moved;
 - iii. That such building and the lot on which the building is to be located will conform to the requirements of the zoning ordinance and other applicable codes, ordinances, and regulations;
 - iv. That its location on the lot does not in any substantial way adversely affect buildings or uses in abutting properties;
 - v. That all landscaping, walkways and masonry work about the premises and the required dedications and improvements for streets and facilities and buildings shall be provided in conformity with the standards of the city;
 - vi. That a bond or other assurance has been posted as a guarantee that the building and grounds will be improved as stipulated by the planning commission before the building is occupied and that the vacated site will be restored to a safe and attractive condition. The amount of the bond or other assurance shall be at least equal to the cost of employing a contractor to make the improvements to the buildings and premises as required by the planning commission. The requirements of this provision shall also apply to the moving of mobile homes, demountable homes, manufactured homes and similar movable structures, except when being moved from outside the city into a mobile home park.

(25) Cemeteries, public or private. No cemetery, or any extension of an already existing cemetery, shall hereafter be established in the city without the consideration and recommendation of the Planning Commission as follows:

1. Application required. Application for the establishment of a cemetery or for the extension to an existing cemetery shall be made on forms provided by the Zoning Administrator. The application shall include:

- a. The name(s) and address(es) of the owner(s) of the land,
- b. The area(s) of the property that will be used for burial purposes,
- c. The area(s) of the property that will be used for screening purposes,
- d. Other information as may be helpful to the Planning Commission in its consideration of the application,
- e. An appropriate fee as adopted by resolution of the City Council.
- f. Detailed site plans drawn to scale by a licensed professional Utah registered land surveyor or professional engineer as per Chapter 17.09.660.
- g. A written legal description of the cemetery,
- h. A narrative describing the:
 - i. Age and condition,

- ii. Historical significance is applicable,
- iii. Whether the cemetery is religious, family, organizational, or publicity owned,
- iv. Any prehistoric or historic archaeological discoveries on the property, and
- v. A written description of names and vital dates of those interred.

2. *Expansion/disruption.* If the expansion requires a disruption of existing burial sites, the applicant shall provide a detailed site alteration plan indicating the extent of disruption of the cemetery, methods of construction or removal of human remains, and reburial plan. Such plan shall include a written description and visual drawing of the plan showing the relocation of graves.

3. *Consideration and recommendations by planning department.* The planning department shall consider, among other things:

- a. The need for the proposed cemetery or extension and the desirability of the location,
- b. Report its findings to the Planning Commission with any conditions that should be imposed on the applicant relative to landscaping and setting aside a part of the proposed area for screening purposes, and
- c. A recommendation that a bond be furnished by the applicant for the fulfillment of any conditions imposed by the Planning Commission, and an appropriate amount of the bond at one hundred fifty (150) percent of the total cost of the improvements.

4. *Conditions of approval to be specified.* The Planning Commission, by resolution, shall establish specific conditions of approval to create/extend a cemetery. Conditions shall be based on:

- a. The need for the proposed cemetery or extension;
- b. The desirability of the location;
- c. Specific areas to be used for burial purposes and screening;
- d. Type and extent of landscaping;
- e. Amount of guarantee bond for improvements;
- f. Light, glare, dust, noise;
- g. Traffic impacts;
- h. Parking.

(26) Animal pound or kennel (private)

- a. Noise, odor and glare shall be contained on the property
- b. Fencing, landscaping, the design of parking areas, and downward directed and full cut-off light fixtures shall be used to reduce impacts on adjacent properties.
- c. Parking shall be provided at a rate of one (1) space per 1,000 square feet and one (1) space per each employee. ADA handicapped accessible spaces shall be provided as required.
- d. A buffer area of twenty five (25) feet shall be used to provide a separation from other uses and adjacent properties. Buffering shall include the elements of b. above.
- e. Vehicular ingress and egress traffic patterns shall be designed to not impede existing traffic flows and provide adequate interior circulation.
- f. Hours of operation for public access shall be from 8:00 am to 5:00 pm or restricted by resolution of the Planning Commission.
- G. Landscaping shall consist of berms, solid wooden privacy fence, decorative block wall or combination thereof and be in accordance with the requirements of Chapter 17.09.360 (Landscaping--Required) and 17.09.370 (Landscaping--Specifications). A minimum of 15% of the interior of the parking areas must be landscaped. Trees shall be utilized to provide shade for vehicles and must be of a sufficient size and placement to provide shade to 40% of the parking area within three (3) years.

(27) Veterinary clinic with kennel

- a. Hours of operation shall be limited to the hours of 7:00 am to 5:00 pm. unless otherwise restricted by resolution of the Planning Commission.
- b. Traffic impacts shall be minimized so that on-street vehicle flows will not be impeded
- c. Noise, odor, and glare shall be contained on the property
- d. Landscaping shall be completed in accordance with the provisions located in Chapters 17.09.360 (Landscaping--Required) and 17.09.370 (Landscaping--Specifications). A minimum of 15% of the interior of the parking areas must be landscaped. Trees shall be utilized to provide shade for vehicles and must be of a sufficient size and placement to provide shade to 40% of the parking area within three (3) years.

(28) Schools, churches, monasteries, etc. All schools, churches, and monasteries shall be subject to the regulations established by Utah State Code Annotated (UCA) and shall be considered by the Planning Commission under Chapter 17.09.530, Conditional Uses. At a minimum, the Planning Commission shall receive a complete site plan which demonstrates that:

- a. Traffic impacts are minimized so that on-street vehicle flows will not be impeded,
- b. Noise, odor, and glare is contained on the property,
- c. Landscaping shall be completed in accordance with the provisions located in Chapters 17.09.360 (Landscaping--Required) and 17.09.370 (Landscaping--Specifications). A minimum of 15% of the interior of the parking areas must be landscaped. Trees shall be utilized to provide shade for vehicles and must be of a sufficient size and placement to provide shade to 40% of the parking area within three (3) years.
- d. Possible impacts on adjacent streets, sidewalks, and bike/pedestrian routes have been identified and reduced to minimum levels,
- e. Adequate parking for the intended use is provided.

Enforcement.

All violations of this chapter are classified as Class B misdemeanors, punishable by a fine not to exceed one thousand dollars or by imprisonment in the county jail for a period not to exceed six months, or by both such fine and imprisonment. Each day of violation or noncompliance shall constitute a separate offense and may be prosecuted accordingly. The city council may also revoke or suspend violator's license(s) for noncompliance of conditional use.

AND FURTHERMORE, Chapter 17.20, C-1 COMMERCIAL--RESIDENTIAL ZONE and specifically 17.20.020 (7) that reads:

“Bed and breakfast facilities (adhering to the conditions of the bed and breakfast ordinance)”,

SHALL BE AMENDED to read:

“Bed and breakfast facilities shall adhere to the regulations established in Chapter 17.09.530, Conditional Use Permits.”

PASSED AND APPROVED in open Council by a majority vote of the Governing

Body of Moab City Council on _____, 2009.

SIGNED:

David L. Sakrison, Mayor

ATTEST:

Rachel Ellison, Recorder

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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