

# VIRGIN TOWN

## ORDINANCE # 2018-022818-4

AN ORDINANCE AMENDING AND RESTATING CHAPTER 25 OF THE VIRGIN UNIFORM LAND USE ORDINANCE (“VULU”) REGULATING CONGREGATE LIVING FACILITIES.

### RECITALS

WHEREAS, Virgin Town (“Town”) is an incorporated municipality duly organized under the laws of the State of Utah;

WHEREAS, the Town is authorized pursuant to Utah Code Annotated, Title 10, Chapter 9A, to enact ordinances necessary or appropriate for the use of land within the Town’s municipal boundaries;

WHEREAS, pursuant to Utah Code Annotated, Title 10, Chapter 3b, Section 301, the Virgin Town Council (“Town Council”) is designated as the governing body of the Town.

WHEREAS, the Town has determined that the short-term rental of residential housing (in full or in part) for periods of less thirty (30) consecutive days can provide homeowners within the Town an opportunity to hold and retain property in difficult economic circumstances or as an investment;

WHEREAS, the Town has determined that there is a seasonal market for short-term lodging in the general vicinity of Zion National Park.

WHEREAS, the Town has determined that there is presently a lack of tourist based short-term lodging within the Town;

WHEREAS, the Town has determined that the impacts of STRs and RHF are consistent with the general impacts of residential uses in residential and agricultural zones;

WHEREAS, notwithstanding determined needs and impacts of short term renting all one’s home (hereinafter referred to as a short term rental arrangement or “STR”) or the short term renting of part of your home while you reside in the remainder (hereinafter referred to as a residential hosting arrangement or “RHF”) the Town desires to also protect the property rights of all homeowners within the Town while mitigating potential concerns of residents stemming from such a use; and

WHEREAS, presently the Town’s Uniform Land Use Ordinance (“VULU”) prohibit the nightly or short term rental of residences (in full or in part) for periods of less than thirty (30) days within the residential and agricultural zoning districts of the Town. *See* VULU 16.3.1 in Chapter sixteen (16), and 17.2.2, and 17.3.12 in Chapter seventeen (17).

WHEREAS, in order to provide for the health, safety and general welfare of the Town and its residents, while protecting individual property rights, the Town, acting by an through the Town

Council desire to permit STRs within certain new developments (via overlay zoning) and RHFs within all present and future residential and agricultural zoning districts of the Town and to set standards for the short term renting of STRs and RHF.

WHEREAS, in order to effectuate this intent, the Town has determined it best to create a new chapter within VULU entitled Chapter 30 (Special Lodging) and to adopt ordinances regulating and setting standards for STRs in one section (VULU Chapter 30, Section 1) and RHF in another section (VULU Chapter 30, Section 2).

WHEREAS, in order to further effectuate this intent, the Town has determined that it will need to create a comprehensive definition for both STRs and RHF and other collaterally related terms used in the new VULU Chapter 30 and include those definitions in Chapter 1 of VULU (specifically Section 1.6).

WHEREAS, in order to further effectuate this intent, the Town has determined that Chapter 25 of VULU regulating Congregate Living Facilities ("CLF") within the Town needs to be amended and restated so that certain types of uses and structures that were arguably once regulated as a CLF are now regulated by VULU Chapter 30 as either an STR or RHF and that VULU Chapter 25 be left to regulate only closed CLFs and that all other uses that could be construed as a CLF are now regulated as either an STR or a RHF pursuant to VULU Chapter 30.

## ORDINANCE

NOW THEREFORE be it ordained by Virgin Town, Washington County, State of Utah, acting by and through the Town Council:

1. Amended and Restated VULU Chapter 25 - Congregate Living Facilities. Chapter 25 of VULU is hereby amended and restated in its entirety as follows:

### **25.1. SPECIAL GUIDELINES.**

*In order to determine which types of businesses and congregate living facilities will work best in which zones, certain properties of proposed enterprises must be considered.*

*25.1.1. For the purposes of this ordinance, an '**open**' residence is one where inhabitants come and go as they please, where movements of occupants and their visitors are unrestricted by formal program rules or by external law. An '**open**' facility is one in which residents have unrestricted interaction with the community. Such facilities encourage integration of residents in a neighborhood atmosphere and, in commercial areas, connect and enhance surrounding commerce spaces.*

*25.1.2. For the purposes of this ordinance, a '**closed**' residence is one where inhabitants are strictly monitored, where movements of occupants may be limited by formal program rules and/or external law. A '**closed**' facility does not necessarily provide unrestricted interaction with the community. Such facilities do not encourage unsupervised integration into the neighborhood and, in commercial zones, create commerce-stagnant areas which may interrupt the flow of consumer-oriented business.*

*25.1.3. For purposes of this ordinance, a '**permanent**' residence or CLF means any*

*building or portion thereof where individuals are actually residing at a given point in time and intend to remain, and not a place of temporary sojourn or transient visit.*

*25.1.4. For the purposes of this ordinance, a ‘**temporary**’ CLF or residence means any building or portion thereof intended to house occupants on a temporary basis.*

*25.1.5. For the purposes of this ordinance, a ‘**non-tourist-based**’ CLF or residence means any building or portion thereof not necessarily intended for those visiting the area for recreation or entertainment.*

*25.1.6. For the purposes of this ordinance, a ‘**tax-base contributory**’ facility is one which provides substantial sales, service, or, if authorized by the state and adopted by resolution of the Town Council, tourist or resort taxes to the town.*

*25.1.7. For the purposes of this ordinance, a ‘**non-tax-base contributory**’ facility is one which does not contribute substantial sales, service, tourist, or resort taxes to the town.*

## **25.2. PLACEMENT.**

### **25.2.1. RESIDENTIAL (R), RURAL RESIDENTIAL (RR) AND AGRICULTURAL (A) DISTRICTS.**

*Because it is the purpose of Virgin’s residential zones to provide and protect areas for low density, single-family residences, the maximum occupancy of a CLF in a Residential, Rural Residential or Agricultural District shall be in accordance with applicable occupancy limits as established by local health and fire safety codes (maximum occupancy is commonly determined by square footage and number of bedrooms). A residential facility for the disabled or the elderly is a permitted use in any zoning area where similar residential dwellings that are not residential facilities for the disabled or elderly are allowed [see UCA 10-9-605 as amended]. Because it is the goal of state and federal laws protecting the disabled and elderly to encourage the “deinstitutionalization” and the “mainstreaming” of these classes into “normalized” residential neighborhoods, and because closed facilities do not contribute to harmonious neighborhood character or integration into residential communities, only ‘open’ CLF’s are permitted in these zones. No congregate living facility which would likely create a fundamental change in the character of a residential neighborhood shall be permitted in these areas.*

### **25.2.2. FUTURE MULTIPLE RESIDENTIAL DISTRICT (RM).**

*Because it will be the purpose of Virgin’s Multiple Residential District, should such a zone be created and adopted, to provide and protect areas for medium density residences, the maximum occupancy of a CLF in a Multiple Residential District shall be in accordance with applicable occupancy limits as established by local health and fire safety codes. In any case, more than five unrelated occupants for a permanent CLF shall require a CLF permit. Because it is the goal of state and federal laws protecting the disabled and elderly to encourage the “deinstitutionalization” and the “mainstreaming” of these classes into “normalized” residential neighborhoods, only ‘open’ CLF’s are permitted in these zones.*

### **25.2.3. RESORT ZONE (RZ).**

*Because it is the purpose of Virgin’s Resort zone to accommodate resort properties which*

*are designed to provide recreation and entertainment for visitors to the area, no ‘non-tourist based’ facilities are permitted in this zone.*

#### **25.2.4. COMMERCIAL ZONE (C).**

*Because it is the purpose of Virgin’s Commercial zone to accommodate commercial businesses designed to service the citizens of Virgin Town and visitors to the area, including the encouragement of foot traffic, ‘closed’ CLF’s are not permitted in this zone. Because Virgin’s limited commercial zones will carry the majority of the burden to provide revenue to the town, only ‘tax-base contributory’ businesses are permitted in this zone.*

#### **25.2.5. FUTURE INDUSTRIAL COMMERCIAL ZONE (IC).**

*Because it will be the purpose of Virgin’s Industrial Commercial zone, should one be created and adopted, to provide opportunities removed from its public commerce corridor for non-consumer based businesses which do not necessarily deal directly with the public, ‘closed’ CLF’s are permitted in this zone.*

### **25.3. REQUIREMENTS.**

#### **25.3.1. GENERAL.**

*25.3.1.A. A CLF shall comply with all standards, provisions and rules of the applicable sections of Utah Administrative Code. A CLF is subject to the Virgin Uniform Zoning Ordinance, the standards contained herein, and the exemptions below.*

*25.3.1.B. A CLF shall comply with all building, safety, and health regulations applicable to similar structures. As part of this requirement the following site development standards and parking standards shall be applicable:*

*25.3.1.B.i. Each CLF in a residential zone shall be subject to minimum site development standards applicable to a single family dwelling or other similar dwelling in the zone in which the CLF is located;*

*25.3.1.B.ii. The minimum number of parking spaces required for a CLF in Residential, Rural Residential or Agricultural District shall be the same as those for a similar dwelling located in the same zoning district in which the CLF is located; and*

*25.3.1.B.iii. A CLF in a residential zone shall not have any structural or landscaping alterations that would change the residential character of the structure or the surrounding area.*

*25.3.1.C. Any conversion of buildings or new construction of a congregate living facility shall require that the development standards of Virgin Uniform Zoning Ordinance and the Virgin Town General Plan are met.*

*25.3.1.D. Any conversion of existing buildings or uses to a congregate living facility, or any new construction of a CLF outside of Residential, Rural Residential or Agricultural Districts shall provide at least thirty percent (30%) of the area as open green space or playground, sufficient parking to service the number of vehicles likely*

*to be used by the maximum allowed number of residents, and adequate off street parking spaces for the staff and visitors of the CLF as determined by the Town Council. The Town Council may reduce the parking requirement as part of the permit or license approval upon a finding that less parking will meet the needs of the public and the proposed program and use of the CLF.*

*25.3.1.E. The number of residents in a permanent CLF shall not increase above five unless a conditional use permit is recommended by the Planning and Zoning Commission and approved by the Town Council.*

*25.3.1.F. The Planning and Zoning Commission and Town Council shall consider the General Plan, protection of neighborhood character and permitted uses in underlying zones, and the aesthetics of any proposed building in making its recommendations and/or approval to any congregate living facility.*

*25.3.1.G. In review of any application for reasonable accommodation, the Town Council shall consider whether the use proposed will fill a demonstrated community need, and shall analyze the anticipated impact of the proposal on surrounding existing or intended uses, including the result with any written findings made. Consideration and analysis may include but are not limited to field trips to the site, commissioned studies and expert opinions. Before granting any application for reasonable accommodation, the Town Council shall find:*

*25.3.1.G.i. That the applicant is eligible for reasonable accommodation because the facility will house a meaningful proportion of the legally disabled.*

*25.3.1.G.ii. That the accommodation will affirmatively enhance the quality of life of the disabled by ameliorating the effects of their disabilities.*

*25.3.1.G.iii. That the accommodation will impose no undue financial or administrative hardship on the Town.*

*25.3.1.G.iv. That the accommodation proposed is required by federal law and is necessary to provide an equal opportunity for housing to the disabled.*

*25.3.1.G.v. That the accommodation will not adversely impact the harmony or intended character of the zone.*

*25.3.1.G.vi. That the proposed accommodation will not adversely impact legislative goals of the rule being relaxed, including those designed to protect the aquifer and comply with the guidelines of the Town's contract with the Washington County Water Conservancy District.*

*25.3.1.H. All recipients of facility services shall reside on site.*

*25.3.1.I. Any CLF which is a business shall maintain active, current business entity status with the Utah Department of Commerce.*

*25.3.1.J. Prior to the occupancy of any CLF requiring state licensure or certification, the person or entity to be licensed or certified shall:*

*25.3.1.J.i. Provide a copy of such license or certification to the Town, and*

*25.3.1.J.ii. certify in a sworn affidavit to the Town that no person will reside or remain in the facility whose tenancy would likely (i) constitute a direct threat to the health or safety of other individuals, or (ii) result in substantial physical damage to the property of others.*

### **25.3.2. LARGE CLF's**

*25.3.2.A. All permanent or closed CLF's housing more than five (5) shall require a conditional use permit. For purposes of state licensure, a CLF may receive preliminary approval of the permit from the Town Council. However, final approval is contingent upon receipt and review of documentation of compliance with all federal, state, and local regulations and requirements, by the Town Council. Preliminary approval is offered as a convenience and is in no way an assurance of final granting of the permit if all requirements are not met.*

*25.3.2.B. The application for a conditional use permit for a large CLF shall include sufficiently detailed site plans, building plans or remodeling plans, and all other information necessary to determine compliance with building, fire, safety and health regulations and standards applicable to similar dwellings. Any alterations must be reviewed and recommended by the Town Planning and Zoning Commission before a conditional use permit is approved.*

*25.3.2.C. The Virgin Town Planning and Zoning Commission may recommend and Council may approve a conditional use permit and/or Town license to operate a Congregate Living Facility they deem to be in harmony with the zone, the surrounding uses, and the General Plan; and in the best interests of the health, safety and welfare of the Town, within the limits of this Ordinance, Utah Code Annotated, and Utah Administrative Code. Commission and Council shall consider in its decision any anticipated impacts of traffic, noise, disruption, added infrastructure, or saturation in the location proposed.*

*25.3.2.D. A business plan and a community impact study shall be provided by the applicant as part of the application for the conditional use permit. The impact study shall be commissioned by the Town at applicant's expense, and shall be conducted by an appropriately qualified firm or individual within any guideline passed by resolution of the Town (if any). The findings shall include results of a groundwater protection study, and shall specifically describe and evaluate the programs provided and the impact of the congregate living facility on local schools, the Town's economy and economic resources, the tax revenue of the Town, the Town's infrastructure including water hookup, sewer, septic and floodplain concerns, public safety and law enforcement, traffic, aesthetics, tourism, and neighboring properties and businesses, including the impact on property values, if any, and the impact of the use on any other uses within or proposed within the same building to be used as a congregate living facility.*

*25.3.2.E. The number of residents in a CLF shall not increase above the number allowed in the conditional use permit unless an amendment to the permit is recommended by the Planning and Zoning Commission and approved by the Town Council. Any request for amendment shall be accompanied by a new study as*

*described in Chapter 25.3.2.D. above.*

**25.3.3. BUSINESS LICENSE.**

*25.3.3.A. The owner or provider of a CLF for more than five people which is a business shall be required to maintain a valid Business License with the Town of Virgin.*

*25.3.3.B. Facility shall notify the Town immediately if a state or county license, permit or certification status changes (for instance, if the facility is placed under a conditional license by the licensing division of the state). The Town shall then review the reasons for the change in status and may, after a hearing and at the discretion of the Town Council, revoke the facility's Town license or place additional conditions on the facility's permit.*

*25.3.3.C. Permission to operate a congregate living facility as regulated by this section shall be subject to a nontransferable Town license which shall be revoked if at any time it is demonstrated to the Town Council, that:*

*25.3.3.C.i. The structure is devoted to a use other than the Town approved use; or*

*25.3.3.C.ii. the structure or program fails to comply with the requirements of this ordinance; or*

*25.3.3.C.iii. the applicant has not obtained and maintained all licenses from the state and/or county required to operate and provided the Town with proof of such licenses. If the license issued by the State of Utah expires, the Town of Virgin Business License will automatically become void and the CLF must close;*

*25.3.3.C.iv. material false information has been provided by the applicant during the process of obtaining a license or permit.*

*25.3.3.D. Town Business Licenses granted to congregate living facilities shall expire upon the expiration, revocation, or surrender of any state or county license or permit or other regulatory license of the facility.*

*25.3.3.E. A Business License to operate any congregate living facility, as authorized by this Chapter, is specific to the facility's location, is nontransferable, and shall only be valid to the owner or provider identified on a valid Town Business License authorizing the operation of such and identified as the owner or provider licensed or certified by the appropriate Department of the State of Utah.*

**25.4. EXCEPTIONS.**

*25.4.1. No CLF shall be made available to an individual whose tenancy would:*

*25.4.1.A. Constitute a direct threat to the health or safety of other individuals, or*

*25.4.1.B. result in substantial physical damage to the property of others. (It is not the intention of this subsection to establish any legal basis for tort liability on the part of the facility operator.)*

*25.4.2. No CLF shall be made available to an individual who:*

*25.4.2.A. is a current user of illegal drugs, or*

*25.4.2.B. has been convicted of the illegal manufacture or distribution of controlled substances.*

*25.4.3. No CLF licensed for the housing of more than five (5) persons which is not in a Resort Zone shall be established or maintained within 660 feet measured in a straight line between the closest property lines of the lots or parcels, of another such CLF.*

*25.4.4. Pursuant to U.C.A. 10-9-501, 502, 503 and 504, a CLF which is a residential facility for elderly persons housing up to eight (8) occupants in any residential area other than one zoned specifically for single-family dwellings shall be exempt from the requirements specified by Section 25-3.2.*

*25.4.5. Dwellings and Dwelling Units which are intended to be leased or rented for periods of fewer than thirty (30) days in accordance with the Town's Special Lodging Ordinance (Virgin Uniform Land Use Ordinance Chapter 30) are not subject to the provisions of this Chapter and the requirements hereof.*

## **25.5. FEES AND FINANCIAL CAPABILITY.**

*25.5.1. The applicant for a permit or license to operate a congregate living facility shall pay the applicable license and permit fees as set by the Town Council.*

*25.5.2. Any costs to the Town for police, emergency, search, fire, or rescue services arising as a result of acts of CLF consumers, staff or management shall be the responsibility of the permittee(s).*

## **25.6. PROCEDURE.**

### **25.6.1. CHECKLISTS.**

*Anyone desiring to procure a Virgin Town permit and/or license to operate a CLF shall begin the process by completing any appropriate Congregate Living Facility Checklist, in the event one is adopted by the Town Council, consulting with the Town Clerk or Zoning Administrator when necessary. When the checklist has been reviewed and deemed complete by the Town Clerk and the Zoning Administrator, the applicant may be placed on the agenda of the next meeting of the Virgin Planning and Zoning Commission.*

### **25.6.2. PLANNING AND ZONING RECOMMENDATION.**

*The Planning and Zoning Commission will hear the applicant's proposal, review the checklist and all required documentation, and determine whether or not it is in harmony with the Virgin Town General Plan and in compliance with the Virgin Town Uniform Zoning Ordinance and State and Town standards for granting a Town license or permit. The Planning and Zoning Commission shall consider public input as well as any request for reasonable accommodation, and make its findings and recommendation to the Town Council, including any specific regulations to be placed on the permit, in writing. Writing requirement may be deemed satisfied by approved written minutes provided that findings*

*are articulated in the minutes of a meeting.*

#### **25.6.3. PUBLIC HEARING REQUIRED.**

*The Planning and Zoning Commission shall publish notice at least ten (10) days in advance and hold a public hearing to gather input from citizens on the granting of a conditional use permit to a congregate living facility.*

#### **25.6.4. TOWN COUNCIL APPROVAL.**

*Once the Planning and Zoning Commission has forwarded formal written recommendations to the Town Council, the applicant may be placed on the agenda of a Town Council meeting. The Council may then approve, modify and approve, or deny the license or permit.*

#### **25.6.5. REASONABLE ACCOMMODATION.**

*None of the foregoing conditions shall be interpreted to limit any reasonable accommodation necessary to allow equal opportunity for the disabled in the establishment or occupancy of a residential facility. If the Zoning Administrator, the Planning and Zoning Commission, or the Town Council should have objective reason to believe an applicant is in need of reasonable accommodation, applicant shall be reminded or informed of the Town policy to reasonably accommodate the disabled, and inquired of as to whether he or she would like to be considered for such an accommodation. Should the applicant respond in the affirmative, a Town official shall offer the Information Submission form to the applicant to fill out and return to the Town.*

*25.6.5.A. Any applicant for a project which will provide housing for a meaningful proportion of disabled persons may apply for reasonable accommodation to the Town Council. The applicant shall articulate on the application form the basis for the requested accommodation.*

*25.6.5.B. Any and all legally protected medical information provided by applicant will be reviewed as confidential, and shall be exempt from disclosure by the Town.*

*25.6.5.C. Each application for a reasonable accommodation shall be decided by the Town Council within not more than thirty (30) days.*

*25.6.5.D. If a request for a reasonable accommodation is denied, specific reasons for denial shall be made in writing or in the approved minutes of a meeting by the Town Council. Where appropriate, the Town Council shall enumerate possible mitigations of any causative impacts or deficiencies underlying denial, with the understanding that the applicant is free to request a new accommodation.*

*25.6.5.E. The Town of Virgin shall make available to all CLF applicants Reasonable Accommodation Information Submission Forms (attachment A).*

#### **25.7. DISPUTES.**

*In the event of a dispute, every effort shall be made to explore all reasonable alternative dispute resolution methods, such as requesting a variance, applying for reasonable*

*accommodation, or participating in mediation or arbitration by mutual agreement between all affected parties.*

**25.8.        SEVERABILITY.**

*If any portion of this Chapter is held to be unconstitutional, invalid, or unenforceable, the remainder of this ordinance shall be deemed severable and shall not be affected, and this ordinance shall remain valid.*

**25.9..        CONFLICT.**

*The terms, standards, and requirements specified by this ordinance shall, wherever there is a conflict, supersede those of all previous ordinances and regulations of Virgin.*

2.        Severability. If any section, clause or portion of this Ordinance is declared invalid by a court of competent jurisdiction, the remainder shall not be affected thereby and shall remain in full force and effect.
3.        Conflicts/Repealer. This Ordinance repeals and supersedes the provisions of any prior ordinance in conflict herewith.
4.        Effective Date. This Ordinance shall become effective immediately upon adoption by the Virgin Town Council and execution by the Virgin Town Mayor.

ADOPTED AND APPROVED BY THE VIRGIN TOWN COUNCIL this 28th day of February, 2018 based upon the following vote:

Council Member:

Dan Snyder	AYE____	NAE____
LeRoy Thompson	AYE____	NAE____
Kevin Stout	AYE____	NAE____
Jay Lee	AYE____	NAE____
Matthew Spendlove, Mayor	AYE____	NAE____

VIRGIN TOWN  
a Utah municipal corporation

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Matthew Spendlove, Mayor

ATTEST:

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Monica Bowcutt, Town Clerk