

# VIRGIN TOWN

## ORDINANCE # 2018-19

AN ORDINANCE AUGMENTING CHAPTER 5 OF THE VIRGIN UNIFORM LAND USE ORDINANCES (“VULU”) TO DESIGNATE THE PROCESS AND BODY FROM WHICH ONE MAY SEEK A DETERMINATION OF WHETHER A NONCONFORMING USE OR NONCOMPLYING STRUCTURE IS LEGAL AND THUS MAY CONTINUE, AND BE AFFORDED THE PROTECTIONS OF VULU CHAPTER 5 AND UTAH CODE ANN. § 10-9A-511.

### 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, Chapter 5 of VULU regulates the continuation, expansion, repair, maintenance & restoration of “Noncomplying Structures” and “Nonconforming Uses” as those terms are defined in VULU Chapter 5 and Utah Code Ann. §§ 10-9a-103(36) & (37) respectively.

WHEREAS, Presently neither Chapter 5, nor any other chapter or section of VULU addresses how a property owner may obtain a formal binding determination from the City as to whether their Noncomplying Structure or Nonconforming Use is legal in that it was legally allowed at the time the use commenced or the structure was constructed.

WHEREAS, the Town wishes to bring clarity to the process by which it and property owners should follow to obtain a binding determination on the issue of pre-dated legality.

### ORDINANCE

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

1. VULU, Chapter 5 is augmented by adding the following Section 5.12:

5.12 PROCESS FOR FORMAL DETERMINATION OF LEGALITY OF NONCOMPLYING STRUCTURE OR NONCONFORMING USE. A property owner who wishes to avail themselves of the ability to maintain, repair and restore a Noncomplying Structure pursuant to Section 5.1, above or continue a

Nonconforming Use pursuant to Sections 5.6 and 5.7, above shall do the the following:

5.12.1. Submit to the Town an application for determination of legal noncomplying structure or nonconforming use (“Legal Non-Conforming Use Application” or “Application”) and pay any administrative filing fee as may be set by the Town from time to time.

5.12.2. Within, or attached to, said Application provide any information and documentation supporting your assertion that at the time your noncomplying structure was constructed or last renovated or your nonconforming use commenced it was legal (or not expressly prohibited) under the Town’s ordinances or Utah law.

5.12.3. Participate in an informal hearing on the issue before the Town Council wherein you are given the opportunity to have legal counsel present and the ability to present additional evidence to further validate your assertion of initial legality of structure or use.

5.12.4. The property owner seeking the determination of legal noncomplying structure or legal nonconforming use has the burden of proving by a preponderance of the evidence that the structure or use was legal (or not-prohibited) at the time of inception.

5.12.5. At the conclusion of the informal hearing the Town Council may make a formal decision to be incorporated into the minutes of the meeting or take the matter under advisement and issue a written determination.

5.12.6. A property owner has the right to appeal the Town Council’s decision to the Virgin Appeal Authority in compliance with VULU Chapter 3 within 15 days of: a) the Town Council’s decision is issued at the conclusion of the informal hearing, or b) the date the written determination is issued and delivered to the applicant.

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 \_\_\_\_ day of June,  
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