

TOQUERVILLE CITY

ORDINANCE 2018.XX

AN ORDINANCE REVISING AND RESTATING IN ITS ENTIRETY SECTIONS 3 AND 4 OF CHAPTER 17 OF TITLE 10 AS WELL AS AMENDING CHAPTER 3 OF TITLE 4, AND CHAPTERS 2, 9, 10, 12 AND 22 OF TITLE 10 OF THE TOQUERVILLE CITY CODE FOR THE PURPOSE OF ELIMINATING THE CONCEPT OF BED AND BREAKFAST TRANSIENT LODGING USE AND BRING THEIR REGULATION UNDER THE UMBRELLA OF AMENDED AND EXPANDED REGULATIONS REGARDING THE NIGHTLY RENTAL OF DWELLINGS WITHIN THE CITY.

RECITALS

WHEREAS, Toquerville City (“City”) is an incorporated municipality duly organized under the laws of the State of Utah.

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

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

WHEREAS, the City has seen an increase of persons and groups wanting utilize Dwellings located within the City for the purpose of renting part or all of the Dwelling on a nightly or short term basis.

WHEREAS, the City has historically conditionally permitted property owners to utilize their personal dwellings as “Bed and Breakfast” lodging establishments in several zoning districts including the City’s R-1 Single-Family Residential Zone.

WHEREAS, the City after analyzing the benefits and the negative impacts that the nightly or short term renting of Dwellings (whether owner occupied or not) have determined that that it is in the best interest of the health, safety and general welfare of the City and its residents to modify its land use ordinances found within the Toquerville City Code to allow (on a permit based regulatory basis) the nightly rental of part or all of a Dwelling located anywhere in the City and eliminate the somewhat duplicative and antiquated allowance and regulation of “Bed and Breakfast” lodging establishments and have that type of nightly or short term rental be regulated under one central Section of the Toquerville City Code (Section 3, Chapter 17 of Title 10).

ORDINANCE

NOW THEREFORE BE IT ORDAINED BY THE TOQUERVILLE CITY COUNCIL, based upon the Recitals set forth above, that:

1. Amended & Restated Sections 3 and 4, Chapter 17, Title 10 of the Toquerville City Code: Sections 3 and 4 of Chapter 17, Title 10 of the Toquerville City Code are hereby amended and restated in their entirety as follows:

10-17-3: NIGHTLY RENTAL:

Nightly Rentals shall occur only within the City upon the meeting of the following requirements:

A. Nightly Rental Permit Application:

- 1. An applicant must apply for and obtain a Nightly Rental Permit, which is a special permit and not a conditional use permit and is approved and otherwise regulated by this Subsection and Chapter. The Nightly Rental Permit is non-transferable to another owner or another Dwelling.*
- 2. The Nightly Rental Permit application must include a site plan for the Lot and a floor plan of the Dwelling. The site plan must identify the required off-street parking to be used in connection with the Nightly Rental Permit.*

B. Nightly Rental Permit Application Review Process: A complete Nightly Rental Permit application will be reviewed by City Staff at the next regularly scheduled City Staff meeting. City Staff shall review the application and forward their recommendation to the Planning Commission. The Planning Commission will hear the application at their next regularly scheduled meeting and conduct a public hearing on the same. After said public hearing the Planning Commission will forward their recommendation to the City Council for final determination on the Nightly Rental Permit application. The City Council may deny, approve or approve with special conditions the Nightly Rental Permit application.

C. One Structure: Each Nightly Rental must occur within and under one roof of a Dwelling and not in a Structure that is Temporary.

D. Parking: Applicant must have sufficient off-street Parking Spaces for all guests and residents. There shall be no overnight on-street parking.

E. Maximum Guests: The maximum number of occupants per Dwelling being used for Nightly Rental shall be the lesser of ten (10) (including the owner and his/her family), or that which is allowed by any uniform safety code adopted by the City.

F. Owner Primary Residence Within City Requirement: The owner of the Dwelling where the Nightly Rental occurs must have his or her primary residence within the municipal boundaries of the City. For purposes of this Chapter, the term "owner" shall mean:

1. *A natural person who owns the controlling interest of the Dwelling wherein the Nightly Rental occurs, or*
 2. *A business entity of which a natural person principal holding a controlling interest of at least fifty one percent (51%) of the entity shall be a primary resident of the City.*
- G. *Nightly Rental Ownership Limitation: Neither an natural person applicant, nor a principal of a business entity applying for a Nightly Rental Permit shall have an ownership interest in more than two Dwellings wherein Nightly Rentals occur within the City.*
- H. *Modifications: Any modifications to the appearance and size of the Dwelling in order to accommodate and facilitate a Nightly Rental should be in keeping with the residential character of the neighborhood within which the Dwelling is located.*
- I. *Penalties: Upon finding a violation under this Chapter and Section, the following penalties & requirements shall apply:*
1. *First violation: Two Hundred Fifty dollars (\$250.00).*
 2. *Second violation: One thousand five hundred dollars (\$1,500.00).*
 3. *Third violation: Four thousand dollars (\$4,000.00).*
 4. *Fourth violation: Nightly Rental Permit automatically revoked.*
 5. *Review: Upon the second or subsequent violation of this Chapter and Subsection, there shall be a mandatory review conducted before the City's Planning Commission, who shall have the ability and right to revoke the Nightly Rental Permit in its sole and absolute discretion. Revocation of a Nightly Rental Permit, for any reason, shall result in a minimum twelve (12) month waiting period prior to any new application, which revocation shall run with the land. Upon revocation, there is no guarantee of any future issuance of a Nightly Rental Permit and all applications will be processed under the then current ordinances. Failure to pay a fine within thirty (30) days of its issuance shall constitute grounds for automatic revocation of the owner's Nightly Rental Permit.*
 6. *Enforcement: In addition to the fines set forth in Subsection I, all violations of this Chapter and Section shall constitute a Class B misdemeanor and shall be enforced in compliance with Chapter 5 of this Title.*
- J. *Revocation of Permit: The Nightly Rental Permit may be revoked at any time, upon notice and a hearing conducted by the Planning Commission, should the*

use a Dwelling for Nightly Rental become a Nuisance per Title 4, Chapter 1 of the City Code.

- K. Annual Renewal of Nightly Rental Permit - Site Approval, Public Hearing: a Nightly Rental Permit has duration of one year and must be renewed annually. For renewal, an applicant must submit a renewal application in a form set by the City Staff along with an updated site plan and floor plan for the Lot and Dwelling indicating where the Nightly Rental will occur or is limited to. Each renewal application shall be approved, approved with additional conditions or denied by the Planning Commission, after a public hearing.*
- L. Log: The holder of the Nightly Rental Permit shall maintain and provide, upon request, the Name, Address and Phone Number of all renters.*
- M. Business License Required: Room Tax: Applicant must apply for and obtain a business license pursuant to Title 3, Chapter 1 of this Code and pay the current Transient Room Tax applicable to motels and hotels within the City.*
- N. Fees: Applicant must pay all applicable fees including an annual Nightly Rental Permit fee to maintain their Permit. The amount of said annual Nightly Rental Permit fee shall be set and adjusted by the City and set forth in the City's Uniform Fee Schedule.*
- O. Health Requirements: Applicants/Permit holders shall ensure that the Dwellings in which a Nightly Rental occurs complies with all local, state and national health codes, regulations and requirements.*
- P. Notification: Applicant must pay for and provide notification to neighboring property owners within three hundred (300) feet from all exterior boundaries of the Lot on which the Nightly Rental is to be located. This notice shall indicate, and the City's Planning Commission shall conduct, a public hearing on the application. To comply with this requirement the applicant must submit self-addressed, stamped envelopes for the required notification along with a printed list of the Lot owners in the designated notification area.*
- Q. Signage: Signs for Nightly Rentals shall conform to the requirements of Chapter 22 of this Title.*

10-17-4: (RESERVED).

2. Amendments to Subsections A & B of Section 2, Chapter 3, Title 4 of the Toquerville City Code: Subsections A & B of Section 2, Chapter 3, Title 4 of the Toquerville City Code is hereby amended as follows:

4-3-2: PROHIBITIONS:

A. Specified: Smoking is hereby prohibited in:

1. All indoor places of public access, subject to all limitation set forth in Utah Code Annotated section 26-38-1 et seq.;

2. All city parks;

3. Within one hundred feet (100') of bus stops; and within one hundred feet (100') of mass gatherings;

4. Within one hundred feet (100') of any school, daycare, care facility or place of worship.

B. Exceptions: Subsection A of this section does not apply to:

1. Areas not commonly open to the public of owner operated businesses having no employees other than the owner-operator;

2. Guestrooms in Hotels, Motels, Dwellings permitted and being used for Nightly Rental, and other similar lodging facilities, but smoking is prohibited under Subsection A of this Section in the common areas of these facilities, including dining areas and lobby areas.

3. Amendments to Section 1, Chapter 2, Title 10 of the Toquerville City Code: Section 1 of Chapter 2 of Title 10 of the Toquerville City Code is hereby amended as follows:

10-2-1: GENERAL DEFINITIONS:

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~~**BED AND BREAKFAST:** A transient lodging facility with the provision of the breakfast meal included in the rental fee. A bed and breakfast shall comply with all appropriate construction codes, zoning requirements or any other ordinances or codes adopted by the city. A bed and breakfast does not qualify as a "home occupation".~~

NIGHTLY RENTAL: the act of leasing a Dwelling, or any part thereof, by a person or entity to another for a consecutive period of thirty (30) calendar days or less in exchange for direct or indirect remuneration.

TRANSIENT LODGING FACILITY: Any establishment that receives payment in any form of exchange for the use of any dwelling for thirty (30) days or less, including any hotel, motel, a Dwelling permitted and being used for Nightly Rental, hostel or the like.

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4. Amendment to Article A – Agricultural District, Chapter 9, Title 10 of the Toquerville City Code: Article A of Chapter 9 of Title 10 of the Toquerville City Code is hereby amended as follows:

10-9A-3: CONDITIONAL USES:

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~~Bed and breakfast rentals.~~

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5. Amendment to Article A – R-1 Single-Family Residential District, Chapter 10, Title 10 of the Toquerville City Code: Article A of Chapter 10 of Title 10 of the Toquerville City Code is hereby amended as follows:

10-10A-3: CONDITIONAL USES:

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~~Bed and Breakfast Rentals.~~

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6. Amendment to Article C – PC Planned Commercial Zone, Chapter 12, Title 10 of the Toquerville City Code: Article C of Chapter 12 of Title 10 of the Toquerville City Code is hereby amended as follows:

10-12C-2: PERMITTED USES:

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~~Bed and Breakfast~~

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7. Amendment to Chapter 22 – Sign Regulations, Title 10 of the Toquerville City Code: Chapter 22 of Title 10 of the Toquerville City Code is hereby amended as follows:

10-22-7: SPECIFIC REGULATIONS FOR EACH ZONE:

A. *Residential Zones: In the residential R-1-12, R-1-15, R-1-20, RM-1 and RM-2 zones:*

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7. *Nightly Rentals: A Nightly Rental established under section 10-17 of this Title may have a sign not to exceed more than four (4) square feet: a) attached to the building and not extending above the roofline: or b) incorporated into the landscaping design or planter box, so long as such sign is a minimum of six feet (6') from the public right of way and not more than four feet (4') in height.*

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B. *Agricultural, Multiple Use, Planned Commercial, Commercial And Manufacturing Zones: In the agricultural (A), multiple use (MU-20), planned commercial (PC), commercial and manufacturing (N-C, H-C, BMP and M-1) zones:*

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7. *Off Premises Signs: For businesses without frontage on SR-17, including Nightly Rentals_without frontage on SR-17, one freestanding directional*

sign may be permitted at the closest intersection with SR-17, providing such sign shall:

- a. Not exceed eight (8) square feet in area nor four feet (4') in height;
- b. Be located entirely on private property with the permission of the property owner;
- c. Not be located nearer than three feet (3') of any public rights of way; and
- d. In no way interfere with traffic visibility triangles.

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8. Repealer. This Ordinance supersedes or repeals the provisions of any ordinance, resolution that are inconsistent with the provisions of this Ordinance.

9. Savings Clause. If any provision or clause in this Ordinance or the application thereof to any person or entity or circumstance is held to be unconstitutional or otherwise invalid by any court of competent jurisdiction, such invalidity shall not affect other sections, provisions, clauses, or applications hereof which can be implemented without the invalid provision, clause, or application hereof, and to this end the provisions and clauses of this Ordinance are declared to be severable.

10. Effective Date. This Ordinance shall become effective immediately upon adoption by the Toquerville City Council.

PASSED AND APPROVED THIS ____ DAY OF OCTOBER, 2018.

Paul Heideman	Aye _____	Nay _____
Keen Ellsworth	Aye _____	Nay _____
Justin Sip	Aye _____	Nay _____
Alex Chamberlain	Aye _____	Nay _____
Ty Bringhurst	Aye _____	Nay _____

TOQUERVILLE CITY
a Utah Municipal Corporation

Lynn Chamberlain, Mayor

Date _____

Attest: Dana McKim, City Clerk/Recorder