



## Planning and Zoning

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<http://www.co.tooele.ut.us/Building/planning.htm>

TCLUO 2019-01

# Chapter 2, Chapter 5 of the TCLUO & Chapter 8 of Title 14 Ordinance Updates

**Public Body:** Tooele County Planning Commission

**Meeting Date:** March 6, 2019

**Request:** General Ordinance and Code Updates

**Planners:** Jeff Miller

**Planning Commission Recommendation:** Not yet received

**Planning Staff Recommendation:** Approval

**Applicant Name:** Tooele County Planning Staff

## PROJECT DESCRIPTION

Planning Staff has been asked by our legal counsel to request general ordinance and code updates to Chapters 2 and 5 of the Tooele County Land Use Ordinance regarding nonconforming uses, and Chapter 8 of Title 14 of the Tooele County Code regarding the Administrative Hearing Officer.

## PROPOSED ORDINANCE AND CODE AMENDMENTS

Additional information will be provided regarding these updates on March 6, 2019.

**\*Please see the attached proposed ordinance and code amendments.**

## PLANNING STAFF ANALYSIS AND RECOMMENDATION

Planning Staff recommends that the Tooele County Planning Commission makes a motion to recommend approval of the proposed ordinance amendments associated with Chapter 2 and 5 of the Tooele County Land Use Ordinance and Title 14 of the Tooele County Code.

## Chapter 5

### NONCONFORMING BUILDINGS AND USES

#### Section

- 5-1. Purpose.
- 5-2. Repairs and alterations.
- 5-3. Additions, enlargements, and moving.
- 5-4. Alteration where parking insufficient.
- 5-5. Restoration of damaged buildings.
- 5-6. One-year vacancy or abandonment.
- 5-7. Continuation of use.
- 5-8. Occupancy within one year.
- 5-9. Change of use.
- 5-10. Expansion permitted.
- 5-11. Nonconforming use of land.
- 5-12. The doctrine of diminishing assets.

#### 5 - 1. Purpose.

Within the districts established by this ordinance or subsequent amendments thereto, there exist uses, structures and lots which were lawfully established or created, but which would be prohibited, regulated or restricted under the terms of this ordinance or future amendments. The intent of this chapter is to permit these non-conformities to continue but not to encourage their perpetuation or survival. Non-conformities are declared by this chapter to be incompatible with permitted uses, structures and lots in the districts involved. It is further the intent of this chapter that non-conformities shall not be enlarged upon, expanded, enjoy an increase in intensity of use, unless specified otherwise. (Ord 2009-06, 2/03/09)

#### 5 - 2. Repairs and alterations.

Repairs and structural alterations may be made to a nonconforming building or to a building housing a non-conforming use. (Ord 2005-22, 9/13/05)

#### 5 - 3. Additions, enlargements, and moving.

(1) An extension of a structure, or placement of an accessory building, which does not further encroach upon the violated height, area, or land requirement, may be granted upon approval by the zoning administrator, if it is found that the extension or placement of the structure is not detrimental to the intent of the land use ordinance.

(2) If the intended extension or placement of the nonconforming structure further encroaches upon the violated height, area, or yard requirement, the request shall be reviewed through the variance process and acted upon by the administrative hearing officer.

(3) A non-conforming building or structure shall not be moved in whole or in part to any other location on the property on which it is situated unless every portion of such building or structure is made to conform to all the requirements of the district in which it is located. (Ord 2005-22, 2/3/09)

#### 5 - 4. Alteration where parking insufficient.

A building or structure lacking the automobile parking space required by the land use ordinance, may be altered or enlarged provided additional automobile parking space is supplied to fully meet the requirements of the land use ordinance. (Ord 2005-22, 9/13/05)

#### 5 - 5. Restoration of damaged buildings.

A nonconforming building or structure, which is or is not occupied by a nonconforming use, that is damaged or destroyed by the public enemy, fire, flood, wind, earthquake or other calamity or Act of God may be restored and the occupancy or use of such building, structure, or part thereof, which existed at the time of the damage or destruction may be continued or resumed, provided that such restoration is started within a period of one year and is diligently pursued to completion.(Ord 2005-22, 9/13/05)

#### 5 - 6. One-year vacancy or abandonment.

(1) A building or structure or portion thereof, nonconforming as to use, which is or hereafter becomes vacant and remains unoccupied for a continuous period of one year shall not be occupied except by a use which conforms to the use regulations of the zoning district in which it is located.

(2) Wherever a nonconforming use has been discontinued for a period of one year, such use shall not thereafter be re-established, and any future use shall be in conformance with the provisions of the land use ordinance.

(3) Any building, structure, or use for which a valid building permit has been issued and actual construction was lawfully begun prior to the effective date of the land use ordinance, may be completed and used in accordance with the plans, specifications and permit on which the building permit was granted.

(4) For purposes of this section, actual construction is hereby defined to be:

(a) The actual placing of construction materials in their permanent position, fastened in a permanent manner.

(b) actual work in excavating a basement; or

(c) the demolition or removal of an existing structure begun preparatory to rebuilding, provided that in all cases actual construction work shall be diligently carried on without delay until the completion of the building or structure involved. (Ord 2005-22, 9/13/05)

5 - 7. Continuation of use.

(1) The occupancy of a building or structure by a non-conforming use, existing at the time this land use ordinance became effective, may be continued.

(2) Except as provided in this chapter, a nonconforming use of land may be continued by the present or a future property owner. (Ord 2005-22, 9/13/05)

5 - 8. Occupancy within one year.

A vacant building or structure may be occupied by a use for which the building or structure was designed or intended, if so occupied within a period of one year after the use became nonconforming. (Ord 2005-22, 9/13/05)

5 - 9. Change of use.

(1) Whenever any part of a building, structure or land occupied by a nonconforming use is changed to or replaced by a use conforming to the provisions of the land use ordinance, the premises shall not thereafter be used or occupied by a nonconforming use, even though the building may have been originally designed and constructed for the prior nonconforming use.

(2) Whenever a nonconforming use of a building or structure, or part thereof, has been discontinued or abandoned for a period of one year, such use shall not be reestablished, and the use of the premises shall be in conformity with the regulations of the zoning district.

(3) Where no enclosed building is involved, discontinuance of a nonconforming use for a period of one year constitutes abandonment.

(4) A nonconforming use not authorized by the provisions of this ordinance shall be discontinued and not reestablished unless the use is conforming to the zoning district in which it is located. (Ord 2005-22, 9/13/05)

5 - 10. Expansion permitted.

A nonconforming use may be extended to include the entire floor area of the existing building in which it is conducted at the time the use became nonconforming. (Ord 2005-22, 9/13/05)

5 - 11. Nonconforming use of land.

The nonconforming use of land, existing at the time this ordinance became effective, or through a change in the land use ordinance or zoning district boundaries, may be continued, provided that no such nonconforming use of land shall in any way be expanded or extended either on the same or on adjoining property, **except as provided in section 5-12**, and provided that if such nonconforming use of land, or any portion thereof, is abandoned or changed for a period of one year or more, any future use of such land shall be in conformity with the provisions of this ordinance. (Ord 2005-22, 9/13/05)

5 - 12. The doctrine of diminishing assets.

Some nonconforming uses, such as mining or gravel extraction must be expanded in order for the use to continue at all. Such ~~businesses~~ ~~uses~~ shall be allowed to expand without limitation or restriction to the ~~immediate area excavated at the time the ordinance was passed~~ ~~boundaries of the parcel on which the nonconforming use exists~~ regardless of the current zoning ~~onto the rest of the property acquired for such a use~~. This shall not allow for the purchase of additional property with which to expand, but does allow that all property held at the time the more restrictive ordinance was passed can be used for the intended purpose. (Ord 2005-22, 9/13/05)

Replace LUO 2-2(174):

Nonconforming Use - Defined.

A nonconforming use is defined in UCA 17-27a-103(38) as follows:

"Nonconforming use" means a use of land that:

- (a) legally existed before its current land use designation;
- (b) has been maintained continuously since the time the land use ordinance regulation governing the land changed; and
- (c) because of one or more subsequent land use ordinance changes, does not conform to the regulations that now govern the use of the land.

## CHAPTER 8

### ADMINISTRATIVE HEARING OFFICER

#### Section

4-8-1. Administrative hearing officer.

4-8-2. Powers and duties.

4-8-3. Appeals.

4-8-4. Variances.

4-8-5. District court review of administrative hearing officer decision.

4-8-6. Ex parte contact.

4-8-1. Administrative hearing officer

(1) In order to provide for just and fair treatment in the administration of the Tooele County zoning ordinance, and to ensure that substantial justice is done, there is hereby appointed an administrative hearing officer to exercise the powers and duties provided in this chapter.

(2) The county commission may appoint as many administrative hearing officers as necessary.

(3) Administrative hearing officers are hereby designated as appeal authorities for Tooele County.

4-8-2. Powers and duties.

(1) The administrative hearing officer shall hear and decide:

(a) appeals from zoning decisions applying the zoning ordinance;

(b) special exceptions to the terms of the zoning ordinance; and

(c) variances from the terms of the zoning ordinance.

(d) applications for the determination of the existence of a nonconforming uses and the expansion or modification of nonconforming uses.

(e) appeals regarding excavation permits as provided in Chapter 30.

(2) The administrative hearing officer shall not make determinations regarding the existence, expansion, or modification of nonconforming uses.

(2) Procedures.

(a) The hearing officer may administer oaths and compel the attendance of witnesses.

(b) All hearings before the hearing officer shall comply with the requirements of Chapter 4, Title 52, Utah Code, Open and Public Meetings.

(i). The hearing officer shall:

- a. Keep minutes of his or her proceedings; and
- b. Keep records of his or her examinations and other official actions.

(ii). The hearing officer shall file his or her records in the office of the development services division. All such records are public records.

(c) Decisions of the hearing officer become effective at the meeting in which the decision is made, unless a different time is designated at the time the decision is made.

(3) The administrative hearing officer may interpret the zoning maps and pass upon disputed questions of lot lines, district boundary lines, or similar questions as they arise in the administration of the zoning regulations.

(4) An administrative hearing officer:

(a) shall:

(i) act in a quasi-judicial manner; and

(ii) serve as the final arbiter of issues involving the interpretation or application of land use ordinances; and

(b) may not entertain an appeal of a matter in which the administrative hearing officer, or any participating member, had first acted as the land use authority. (Ord. 2005-20, 7/5/05)

#### 4-8-3. Appeals.

(1) (a) An applicant or any other person or entity adversely affected by a decision administering or interpreting a zoning ordinance may appeal that decision applying the zoning ordinance by alleging that there is error in any order, requirement, decision, or determination made by an official in the administration or interpretation of the zoning ordinance.

(b) Appeals to the administrative hearing officer shall be made in writing and shall be filed with the ~~county department of engineering~~ Community Development Department within 30 10 business days of the decision administering or interpreting a zoning ordinance.

(2) The person or entity making the appeal has the burden of proving that an error has been made.

(3) Only decisions applying the zoning ordinance may be appealed to the administrative hearing officer. A person may not appeal, and the administrative hearing officer may not consider, any zoning ordinance amendments.

(4) Appeals may not be used to waive or modify the terms or requirements of the zoning ordinance. (Ord. 2005-20, 7/5/05)

#### 4-8-4. Variances.

(1) Any person or entity desiring a waiver or modification of the requirements of the zoning ordinance as applied to a parcel of property that he owns, leases, or in which he holds some other beneficial interest may apply to the administrative hearing officer for a variance from the terms of the zoning ordinance.

(2) (a) The administrative hearing officer may grant a variance only if:

(i) literal enforcement of the zoning ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the zoning ordinance;

(ii) there are special circumstances attached to the property that do not generally apply to other properties in the same district;

(iii) granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same district;

(iv) the variance will not substantially affect the general plan and will not be contrary to the public interest; and

(v) the spirit of the zoning ordinance is observed and substantial justice done.

(b) (i) In determining whether or not enforcement of the zoning ordinance would cause unreasonable hardship under Subsection (2)(a), the administrative hearing officer may not find an unreasonable hardship unless the alleged hardship:

1) is located on or associated with the property for which the variance is sought; and

2) comes from circumstances peculiar to the property, not from conditions that are general to the neighborhood.

(ii) In determining whether or not enforcement of the zoning ordinance would cause unreasonable hardship under subsection (2)(a), the administrative hearing officer may not find an unreasonable hardship if the hardship is self-imposed or economic.

(c) In determining whether or not there are special circumstances attached to the property under Subsection (2)(a), the administrative hearing officer may find that special circumstances exist only if the special circumstances:

(i) relate to the hardship complained of; and

(ii) deprive the property of privileges granted to other properties in the same district.

(3) The applicant shall bear the burden of proving that all of the conditions justifying a variance have been met.

(4) Variances run with the land.

(5) The administrative hearing officer may not grant use variances.

(6) In granting a variance, the administrative hearing officer may impose additional requirements on the applicant that will:

- (a) mitigate any harmful effects of the variance; or
- (b) serve the purpose of the standard or requirement that is waived or modified. (Ord. 2005-20, 7/5/05)

#### 4-8-5. District court review of administrative hearing officer decision.

- (1) Any person adversely affected by any decision of an administrative hearing officer may petition the district court for a review of the decision ~~as provided in Utah Code Ann. §17-27a-801 et seq.~~
- (2) ~~In the petition, the plaintiff may only allege that the administrative hearing officer's decision was arbitrary, capricious, or illegal.~~
- (3) ~~The petition is barred unless it is filed within 30 days after the administrative hearing officer's decision is final. As a condition precedent to judicial review, each adversely affected person shall timely and specifically challenge a land use authority's decision, in accordance with this title.~~
- (4) ~~The administrative hearing officer shall transmit to the reviewing court the record of its proceedings including its minutes, findings, orders and, if available, a true and correct transcript of its proceedings. If the proceeding was tape recorded, a transcript of that tape recording is a true and correct transcript for purposes of this subsection.~~
- (5) ~~If there is a record, the district court's review is limited to the record provided by the administrative hearing officer. The court may not accept or consider any evidence outside the administrative hearing officer's record unless that evidence was offered to the administrative hearing officer and the court determines that it was improperly excluded by the administrative hearing officer.~~
- (6) ~~If there is no record, the court may call witnesses and take evidence.~~
- (7) ~~The court shall affirm the decision of the administrative hearing officer if the decision is supported by substantial evidence in the record.~~
- (8) ~~The filing of a petition does not stay the decision of the administrative hearing officer. Before filing the petition, the aggrieved party may petition the administrative hearing officer to stay its decision. Upon receipt of a petition to stay, the administrative hearing officer may order its decision stayed pending district court review if the administrative hearing officer finds it to be in the best interest of the county. After the petition is filed, the petitioner may seek an injunction staying the administrative hearing officer's decision.~~

#### 4- 8-6. Ex parte contact.

- (1) Ex parte contact between an administrative hearing officer and opposing parties involved in litigation with Tooele County involving land use issues shall be prohibited. Appeal authorities shall not participate in site or office visits, electronic communication, written communication, or verbal conversation either face-to-face or over the telephone, with any individual or any representative of a company or entity involved in legal proceedings with Tooele County involving land use issues. This prohibition shall include contact with plaintiffs who have filed suit against Tooele County, claimants who have served a Notice of

Claim on Tooele County, and defendants in actions filed by Tooele County, such as those in violation of provisions of the Tooele County Code or the Tooele County Land Use Ordinance.

(2) Appeal authorities shall be restricted from ex parte contact, including site or office visits, electronic communication, written communication, and verbal conversation either face-to-face or over the telephone, with any individual or representative of a company or entity when such interaction involves a request for hearings, variances, appeals of administrative decisions, or special exceptions. This restriction on ex parte contact applies to all variances, appeals of administrative decisions, or special exceptions after an application for such is filed with the Tooele County Engineering Department, while the application is under review by the administrative hearing officer or while the application is under appeal, if an appeal is filed. Appeal authorities shall not participate in ex parte contact with individuals or representatives of a company or entity opposed to a request for a hearing, variance, appeal of administrative decision, or special exception.

3) If ex parte contact as described in Subsections (1) (1) or (2) occurs, it shall be disclosed by the administrative hearing officer who had such contact and who shall then neither participate in the discussion nor render a decision on the matter.

(4) Receipt of written information regarding an active request for a hearing, variance, appeal of administrative decision, or special exception shall be permitted, provided such written information is disclosed by the administrative hearing officer and submitted as a part of the record. (Ord. 2005-20, 7/5/05)