

## VIRGIN TOWN

### ORDINANCE # 2019-27

AN ORDINANCE AMENDING AND RESTATING CHAPTER 5: NONCONFORMING USES AND NONCOMPLYING STRUCTURES OF THE VIRGIN UNIFORM LAND USE ORDINANCES (“VULU”) TO CLARIFY AND PROVIDE CONTINUITY THROUGHOUT.

#### RECITALS

**WHEREAS**, Utah Code provides for the adoption and amendment of Town land use ordinances by the Land Use Authority, which in Virgin is the “Town Council with recommendation by the Planning and Zoning Commission”; and

**WHEREAS**, the Virgin Land Use Authority finds that the existing Virgin Town Code (VULU) Chapter 5: Nonconforming Uses and Noncomplying Structures, and the various sub sections found within, require updating to meet the changing needs of the town; and

**WHEREAS**, the Virgin Land Use Authority finds that, to accommodate the towns desire to clarify and provide continuity within VULU; and

**WHEREAS**, the Virgin Town Planning and Zoning Commission held properly noticed Public Hearings on these amendments on November 13, 2019, and voted to recommend its draft amendment ordinance to the Virgin Town Council at a regular meeting on \_\_\_\_\_;

**NOW, THEREFORE BE IT ORDAINED** by the Land Use Authority of Virgin, Utah that, in order to provide for the health, safety and general welfare of the citizens of Virgin, Utah, the VULU Ordinance is hereby amended to incorporate the following changes:

#### ORDINANCE

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

### **CHAPTER 5:**

### **NONCONFORMING USES AND NONCOMPLYING STRUCTURES**

#### **5.0 PURPOSE AND DEFINITIONS**

**5.0.1. Purpose:** The purpose of this chapter is to regulate the continued existence of nonconforming uses, noncomplying structures, and noncomplying lots. (Utah State code 10-9a-511)

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5.0.2. Intent: The intent of this chapter is to allow continued use of legal nonconforming uses and/or noncomplying structures while at the same time protecting existing conforming development within the community.

## 5.1. MAINTENANCE, REPAIR, AND RESTORATION.

A noncomplying structure or a structure housing or containing a nonconforming use may be maintained and repaired.

5.1.1. A noncomplying structure or a building or structure occupied by a nonconforming use which is damaged or is destroyed by fire, flood, wind, earthquake, or other calamity, may be restored and the occupancy or use of such building, structure, or portion thereof, which existed at the time of such damage or destruction, may be continued or resumed.

## 5.2. EXPANSION OF NONCOMPLYING STRUCTURE.

A noncomplying structure may not be enlarged unless:

5.2.1. A variance is obtained under VULU Chapter 3 regulations; or

5.2.2. The enlargements are made in conformance with all regulations of the zone in which the noncomplying structure is located; or

5.2.3. The following criteria are met:

5.2.3.A. The changes do not further increase the structures noncompliance to current land use ordinances.

5.2.3.A.i. A previous legal encroachment of a required setback may be horizontally continued, provided additional encroachment of the setback requirements does not occur.

5.2.3.B. The changes do not create an unmitigated hardship for adjoining properties,

5.2.3.C. The changes do not create a public safety hazard,

5.2.3.D. The changes have been ~~approved~~ reviewed by the Town's Zoning Administrator, P&Z Chair, or their designee for compliance with this ordinance.

### 5.2.4. Structure Expansion Exceptions.

5.2.4.A. Accommodations to meet minimum ADA requirements will not be considered as increasing or enlarging a nonconforming use or structure.

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5.2.4.B. For the purposes of this section, the addition of a solar energy device to a building is not a structural alteration. (Utah State code 10-9a-511)

### **5.3. EXPANSION OF STRUCTURE OCCUPIED BY NONCONFORMING USE**

A structure occupied by a nonconforming use may be enlarged if:

**5.3.1.** The enlargement does not increase the nonconforming use; and

**5.3.2.** The criteria of 5.2 of this ordinance are met.

### **5.4. CHANGE OF USE.**

The nonconforming use of a building or structure may not be changed except to a conforming use; but once such change is made, the use shall not thereafter be changed back to a nonconforming use.

### **5.5. CONTINUATION OF NONCONFORMING USE.**

A nonconforming use may be continued on the parcel of land upon which such nonconforming use has historically been made and according to the provisions of this ordinance.

**5.6. NONCONFORMING SIGNS.** See VULU Chapter 26, Sign Regulations.

### **5.7. NONCOMPLYING LOTS.**

See Chapter 4.28 for specific regulations on noncomplying lots of record.

### **5.8. ABANDONMENT DETERMINATIONS.**

5.8.1. Abandonment of a noncomplying structure or nonconforming use may be presumed to have occurred if (Utah State code 10-9a-511- 4(c)):

5.8.1. A majority of the primary structure associated with the nonconforming use has been voluntarily demolished without prior written agreement with the municipality regarding an extension of the nonconforming use;

5.8.1.B. The use has been discontinued for a minimum of one year; or

5.8.1.C. The primary structure associated with the nonconforming use remains vacant for a period of one year.

5.8.1.C.i. Calculation of Period of Discontinuance: Any period of such discontinuance caused by government actions, without any contributing fault by

the nonconforming user, shall not be considered in calculating the length of discontinuance.

5.8.1.C.ii. A vacant building or structure occupied by a use for which the building or structure was designed or intended, within a period of one (1) year after the use became nonconforming, is not considered abandoned.

5.8.2. Presumption of Abandonment: Any party claiming that a nonconforming use has been abandoned will have the burden of establishing the abandonment. (Utah State code 10-9a-511-4(b))

5.8.3. Rebuttal of Presumption of Abandonment: A property owner may rebut the presumption of abandonment and shall have the burden of establishing that any claimed abandonment has not in fact occurred. (Utah State code 10-9a-511-4(b))

#### **5.8.5. Abandonment Determination Procedure for Contested Uses or Structures**

5.8.5.A. A noncomplying structure, a structure occupied by a nonconforming use, or a nonconforming use of land may be determined to be abandoned by the Town after:

5.8.5.A.i. The Town receives a written presumption of abandonment.

5.8.5.A.ii. Investigate the claim within 30 days according to the current Town and State laws regarding these issues, determining that:

5.8.5.A.ii.1. The complaint is valid according to the Town's complaint policies and procedures;

5.8.5.A.ii.3. the use or structure is actually in noncompliance with current laws;

5.8.5.A.ii.4. the use or structure not operating under a CUP or Business permit if applicable.

5.8.5.A.iii. If the Town sees cause to proceed with abandonment determination, a written notice must be sent to the affected party, 15 days prior to a hearing or action being taken. The written notice must list:

5.8.5.A.iii.1. all relevant details of the complaint;

5.8.5.A.iii.2. any laws that may be applicable to the situation;

5.8.5.A.iii.3. the process for determination of use;

5.8.5.A.iii.4. that an abandonment determination of the non-conforming use, or noncomplying structure is being considered; and

5.8.5.A.iii.5. the date set for a hearing on the issue;

5.8.5.A.iv. The Town Council will hold a hearing in an open and public meeting to ensure that:

5.8.5.A.iv.1. The party claiming the abandonment and the affected party have an opportunity to be heard before the Town Council.

5.8.5.A.iv.2. Continuity of business license or CUP must be continuation of the use.  
(I don't understand what this is for?)

5.8.5.A.v. After the hearing, the Council may then determine:

- 5.8.5.A.v.1. To continue the hearing to consider more information about the claim;
- 5.8.5.A.v.2. the use or structure has not been abandoned and may continue;
- 5.8.5.A.v.3. the use or structure has been abandoned and may not continue;
- 5.8.5.A.v.4. set an amortization period;

5.8.5.A.vi. Any revocation or mitigation may require the Council to set a date for termination or conditional compliance of a Nonconforming use or Noncomplying Structure by Amortization according to the following standards:

5.8.5.A.vi.1. **Standards For Determining Amortization Period:** The Town may determine the appropriate amortization period (a formula establishing a reasonable time period during which the owner can recover or amortize the amount of the owner's investment in the nonconforming use) upon the consideration of evidence gathered by the investigation and presented at the hearing regarding the following factors:

- a. The general character of the area surrounding the nonconforming use;
- b. The zoning classification and use(s) of nearby property;
- d. The owner's actual amount of investment in the property on the effective date of nonconformance, less any investment required by other applicable laws and regulations;
- e. The amount of financial loss, if any, that would be suffered by the owner upon termination of the use; and
- f. The extent to which the amortization period will further the public health, safety and welfare.

5.8.5.A.vii. Once a final decision has been made by the Council, the Town will issue a written notice of determination to the property owner property owners or designee.

5.8.5.A.viii. If abandonment is determined by the Council, the written notice will outline the process and procedure for Termination of a Nonconforming use or Noncomplying Structure by Amortization determined in combination with the Town Council, Town staff, and the owner(s) or designated representative of the property.

## 5.9. Appeal:

5.9.1. 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:

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- 5.9.1.i. the Town Council’s decision issued at the conclusion of the informal hearing; or
- 5.9.1.ii. the date the written determination is issued and delivered to the applicant; or
- 5.9.1.iii. a future date specified by the Town Council.

5.9.2. Appeal: Any person adversely affected by a final decision of the appeals authority may file a petition for review of the decision with the district court within thirty (30) days after the decision is rendered.

(Definitions to be included in Chapter 1)

1. 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.
2. Conflicts/Repealer. This Ordinance repeals and supersedes the provisions of any prior ordinance in conflict herewith.
3. 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 ORDINANCE NUMBER 2019-27 will become effective on this \_\_\_ day of \_\_\_\_\_, 2019 based upon the following vote:

<u>Council Member:</u>		
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

\_\_\_\_\_  
Matthew Spendlove, Mayor

ATTEST:

\_\_\_\_\_  
Monica Bowcutt, Town Clerk

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