

TOQUERVILLE CITY
RESOLUTION 2022.XX



A RESOLUTION OF THE CITY COUNCIL OF TOQUERVILLE CITY, UTAH, CLARIFYING THE REQUIREMENT FOR THE INCLUSION OF A USE LIST OR TABLE IN MPDO PLANS PURSUANT TO SECTION 10-15C-8(1)(f) OF THE TOQUERVILLE CITY CODE, RULES FOR INTERPRETATION THEREOF, AND A DECLARATION OF THE LEGAL EFFECT OF A USE TABLE IN AN MPDO PLAN WHICH RECEIVES FINAL APPROVAL.

PREAMBLE

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

WHEREAS, the Toquerville City Council (“City Council”) is the governing body of the City vested with all legislative and administrative powers delegated to the City pursuant to Article 11, Section 5 of the Utah Constitution and Utah Code Ann. § 10-1-103.

WHEREAS, pursuant to Utah Code Ann. §10-9a-103(30) the City Council is the “Land Use Authority” of the City.

WHEREAS, as the City’s Land Use Authority, the City Council has adopted a General Plan and a regulatory scheme in Title 10 of the City Code of Toquerville City, Utah (“Toquerville City Code”) whereby various zoning districts have been created, and all land located within the municipal boundaries of the City have been designated as being part of a specific zoning district.

WHEREAS, under Title 10 of the Toquerville City Code (Land Use Regulations) each zoning district has various uses which are either permitted, conditional or prohibited in that zone.

WHEREAS, under Article C of Chapter 15 (Overlay Zones) of Title 10 of the Toquerville City Code there exists a zoning district for contiguous parcels of more than 100 combined acres known as the Master Planned Development Overlay Zone (“MPDO Zone”).

WHEREAS, the purpose of the MPDO Zone is to provide an alternative to the conventional zoning districts within the City by allowing traditional uses to be mixed and the density of development to be clustered so as to promote the economical and efficient use of land that blends with the natural character of the City, have a higher level of project amenities while preserving the unique scenic qualities of open space.

WHEREAS, specifically Section 10-15C-5(C) of the Toquerville City Code indicates that:

1. *Any use or combination of uses may be allowed in an MPDO, provided such uses are consistent with the city general plan.... and*

2. Mixed uses, including limited neighborhood commercial and multi-family residential, may be allowed within one project....

WHEREAS, in order to obtain the MPDO Zone designation, an applicant, with the assistance of professionals, must prepare, submit, and gain approval of, an MPDO Plan at both a conceptual, preliminary, and final level, each of which having a greater level of specificity.

WHEREAS, Section 10-15C-8(1)(f) of the Toquerville City Code requires an applicant for an MPDO Zone designation to submit a statement which includes the type and number of residential and non-residential uses within the proposed MPDO development as part of the required MPDO Plan submittal at the conceptual stage.

WHEREAS, Sections 10-15C-9 and 10-15C-10 require the same statement of uses in an applicant's submittal (along with new and additional information and depictions) for preliminary approval and final approval of an applicant's MPDO Plan.

WHEREAS, within the City's land use scheme there are numerous types of zoning districts including multiple commercial and residential zones.

WHEREAS, in the City's commercial and residential zoning districts certain uses are permitted in one commercial or residential zone, yet the same use is conditional or prohibited in other commercial zones and residential zones.

WHEREAS, in order to comply with the mandate of Section 10-15C-8(1)(f) of the Toquerville City Code and properly identify, permit and/or limit certain uses or the mixing of uses in one area of an MPDO development as opposed to another areas, applicants will generally need to create lists or tables within their MPDO Plan.

WHEREAS, Article C of Chapter 15 of the Toquerville City Code (MPDO Zone) is unclear as to what the legal effect of a permitted/prohibited use lists or table in an MPDO Plan that has been given final approval.

WHEREAS, after careful consideration by the City Council, with special emphasis being placed upon the health, safety and general welfare of the City and its residents as well the desire to effectuate the purposes and intent behind the MPDO Zone, has determined to adopt the following interpretive resolution regarding such lists or tables.

RESOLUTION

NOW, THEREFORE, the City Council of Toquerville, Utah hereby resolves and adopts the following interpretive policy with regards to the use and effect of a permitted/prohibited use list or table contained in an approved MPDO Plan:

1. Inclusion of Permitted/Prohibited Use Lists or Tables. Applicants seeking an approval of an MPDO Plan and the MPDO Zone designation shall include, as part of its conceptual MPDO Plan submittal, either a list or a table showing all permitted and prohibited residential uses

and commercial uses or mixture of uses within the proposed MPDO development (“MPDO Use Table”).

2. Interpretation Policy for MPDO Use Tables. The following rules of interpretation shall apply to all MPDO Use Tables:

a. If a proposed MPDO development has areas within its boundaries that are intended to have differing permitted and prohibited uses (or mixtures thereof) said areas shall be designated clearly as a separate planning area with a distinct separate name for each area.

b. Only those commercial, industrial, or agricultural uses expressly delineated in an MPDO Use Table shall be deemed permitted within a specific planning area.

c. Any commercial, industrial, or agricultural use not expressly listed as being permitted in an MPDO Use Table shall be considered intentionally omitted and therefore prohibited in a specific planning area.

d. All commercial planning areas shall be deemed to permit the mixing commercial and residential uses unless expressly prohibited in the MPDO Use Table.

e. All planning areas not designated as a commercial planning area shall be considered a residential planning area or open space.

f. Any permitted use in a MPDO Use Table which is a conditional use in another zoning district of the City is deemed, by virtue of the data, design and engineering provided to the City in the MPDO Plan approval process and the ongoing covenants of the Applicant memorialized in the MPDO Development Agreement, all standards and conditions precedent for the issuance of a conditional use permit pursuant to Section 10-20-4 (Conditional Use Standards) of the Toquerville City Code have, or will be satisfied.

3. Legal Effect of MPDO Use Table. So long as a permitted use listed in an MPDO Use Table is a permitted or conditional use within any of the City’s various zoning districts at the time the MPDO Plan receives final approval from the City Council, the legal effect of said approval is to make all permitted uses listed in the Plan’s MPDO Use Table legally permitted - meaning that the owner of property within the planning area may develop their property and commence the desired use without further zoning or land use approvals from the City, subject only to the requirements and conditions of applicable City construction standards, payment of applicable impact fees and the obtainment of necessary permits and licensing (including building permits and business licensure). Any future addition or deletion of permitted uses shall be considered a material modification of the MPDO Plan and shall require the City or the applicant seek an formal amendment to the MPDO Plan and any recorded development agreement that memorializes the MPDO Plan.

4. Supersession/Repealer. This Resolution supersedes or repeals the provisions of any Resolution of the City Council that is inconsistent with its provisions.

5. Severability. If any provision or clause of this Resolution or 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(s), clause(s) or application(s) hereof, and to this end the provisions and clauses of this Resolution are declared to be severable.

6. Effective Date. This Resolution shall become effective immediately upon adoption by the City Council.

PASSED AND APPROVED this 21st day of December, 2022.

Council Person:

Joey Campbell	AYE	_____	NAE	_____	ABSTAIN	_____	ABSENT	_____
Ty Bringhurst	AYE	_____	NAE	_____	ABSTAIN	_____	ABSENT	_____
Todd Sands	AYE	_____	NAE	_____	ABSTAIN	_____	ABSENT	_____
John ‘Chuck’ Williams	AYE	_____	NAE	_____	ABSTAIN	_____	ABSENT	_____
Gary Chaves	AYE	_____	NAE	_____	ABSTAIN	_____	ABSENT	_____

TOQUERVILLE CITY
a Utah Municipal Corporation

Attest:

Justin Sip, Mayor

Daisy Fuentes, City Recorder