



VIRGIN TOWN
ORDINANCE NO. 2023-XX

AN ORDINANCE AMENDING AND RESTATING SECTIONS 2 THRU 20 OF CHAPTER 16 (CONDITIONS AND CONDITIONAL USES) AND SECTION 6.1.2 OF THE VIRGIN UNIFORM LAND USE ORDINANCES (“VULU”) TO BETTER ESTABLISH THE PROCESS, PROCEDURES AND CRITERIA FOR THE ISSUANCE AND APPEALS OF CONDITIONAL USE PERMITS (“CUPS”) WITHIN THE TOWN AND TO ADD THE TERM “ADVERSELY AFFECTED PARTY” AND “JOINT UTILITY BOARD” TO SECTION 2.12 (DEFINITIONS) OF VULU.

RECITALS

WHEREAS, Pursuant to Utah Code Ann. § 10-1-201 Virgin Town (“the Town”) is a Utah municipal corporation and political subdivision of the State of Utah.

WHEREAS, Pursuant to Utah Code Ann. § 10-3b-401 the Virgin Town Council (“Town Council”) is the legislative and governing body of the Town.

WHEREAS pursuant to Utah Code Ann. § 10-9a-103(30) the Town Council, in addition to being the legislative and governing body of the Town, is also the Land Use Authority vested with the power to enact all Land Use Regulations and make all Land Use Decisions within the Town unless the latter administrative power is delegated to another body or person.

WHEREAS,

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ORDINANCE

NOW THEREFORE BE IT ORDAINED by the Virgin Town Council as follows:

1. Amendment & Restatement of Sections 16.02 thru 16.20 of VULU. Sections 2 thru 20 of Chapter 16 (Conditions and Conditional Uses) of the Virgin Uniform Land Use Ordinances is hereby amended and restated in its entirety as follows:

16.02 NATURE OF CONDITIONAL USE PERMITS (CUP)

- A.* CONDITIONS TO RUN WITH THE LAND. A CUP with all conditions imposed by the Town run with the land and shall be binding on the applicant as well as their successors.
- B.* EXPANSION OF A CONDITIONAL USE. No conditional use may be expanded without the approval of a new CUP.
- C.* ALTERATION OR ABANDONMENT OF CONDITIONAL USE. If a use is altered from that which was originally approved or permitted in accordance with this Chapter, or abandoned for one (1) year, or has not been established within one (1) year after the date granted ("Establishment Deadline"), the CUP may be nullified and/or voided after a decision by the Town Council at a public meeting.
 - 1.* Any affected party must be notified of the proceedings and of any results determined.
 - 2.* The one (1) year Establishment Deadline may be modified by the Planning & Zoning Commission if it is determined that the proposed use or uses will commence within one (1) year at a suitable scale recognizing that market forces or other considerations such as property size, utility availability and access might dictate the point in time when the use will occur at full scale on the subject property. In said instances the Planning & Zoning Commission, in its discretion, shall set phased commencement and total completion deadlines.

16.04 PERMIT REQUIRED

- A.* REQUIRED. A Conditional Use Permit (CUP) IS required if:
 - 1.* The proposed use or similar type of use is listed as Conditional Use and not a permitted or non-permitted use in the zone that the use is being requested in;
 - 2.* The proposed Conditional Use would require:
 - a.* the new construction of a Building, Structure or improvements,
 - b.* the expansion of a Conditional Use upon real property or an existing Building, Structure or improvements, or
 - c.* a substantial change in the type of Conditional Use.

3. If likely problems or detrimental impacts to the surrounding area can be identified in the Preliminary Review or the Final Review phases that require mitigating conditions according to this Chapter.

B. NOT REQUIRED. A Conditional Use Permit IS NOT required if:

1. The Business or Structure the Conditional Use is being held in has already obtained a CUP from the Town; and
2. The proposed Conditional Use is similar or compatible with the current use identified in the CUP issued to the property without adding additional impact to the surrounding area (as determination by the Zoning Administrator).

16.06 CUP APPLICATION PROCESS

A. APPLICATION. Application for a Conditional Use Permit for new construction, a substantial change of a Conditional Use, or the expansion of a Conditional Use shall be filed with the Town Clerk by the property owner/developer or a certified agent on a form authorized by the Town. The Application shall include (but is not limited to):

1. Contact info of the CUP applicant (and owner of the property if different);
2. A Development Plan (see Subsection B below) with any applicable plats, plans, or design drawings necessary for Town Staff review (hard and digital copies will be required and at applicant's expense);
3. A written description or narrative of the proposed project and the use of the land;
4. If applicable, an estimate of the number of employees and a summary of the type of equipment and Buildings to be involved with the Conditional Use;
5. An estimate of the time required for construction of the project, including the time required for construction of each phase, if construction is to be made in phases;
6. A listing of all utilities which will be in place before, during and after construction of the project; and
7. Such other pertinent information, including but not limited to proof of financial responsibility, fiscal impact analysis, professional traffic, geotechnical, utility capacity or other study, and detailed site analysis, as

may be required by the ~~JUB DRC~~ and Zoning Administrator, in their sole discretion, for evaluation of the CUP application.

B. DEVELOPMENT PLAN. A Development Plan shall include:

1. A map or satellite image of the existing site and surrounding area with key structures, features, and existing utilities marked;
2. A Site Plan of the proposed buildings, fences, screening, landscaping, vehicle circulation patterns, automobile parking and loading areas, setbacks, walkways, open spaces, permanent signs, any amenities, and any other information deemed necessary to evaluate the proposed Conditional Use;
3. As necessary, any plats, plans, or drawings drawn to scale showing the location and dimensions of all existing buildings and structures, streets, parking, traffic flow, landscape and open space areas, signs, or other information as appropriate to the CUP application;

C. STAFF APPLICATION COMPLETENESS REVIEW. Upon the filing of the CUP application with the Town Clerk and payment received for CUP application filing fees, the CUP application will be reviewed by the Town Staff (including the Zoning Administrator) for completeness. After the Town Staff has determined the application to comply with filing requirements of Subsection A above, the CUP application will proceed to the CUP review and approval process.

16.08 CUP REVIEW AND APPROVAL PROCESS

A. CUP PRELIMINARY REVIEW PROCESS.

1. Upon the CUP application being deemed complete by the Town Staff, the application shall be placed on the agenda for the next Joint Utility Board (“~~JUB DRC~~”) meeting. At the ~~JUB DRC~~ meeting, the CUP application will receive a preliminary review and feedback will be given to the applicant by members of the ~~JUB DRC~~. At the conclusion of the CUP preliminary review, the Zoning Administrator shall issue a “CUP Preliminary Review Report & Recommendation”. Should the ~~JUB DRC~~ determine that additional information, plans or studies are needed it may require applicant to provide such prior to said Report & Recommendation is issued.
2. The CUP Preliminary Review Report & Recommendation shall contain the following:
 - a. A brief summary of the Conditional Use being proposed in the CUP application;

- b. A list of any likely adverse effects to the surrounding area that was identified by the ~~JUB~~ DRC during the CUP Preliminary Review;
- c. A compliance analysis and discussion of the proposed Conditional Use in relation to EACH General CUP Review Criteria set forth in Section 16.16 below;
- d. A compliance analysis and discussion of the proposed Conditional Use in relation to EACH applicable set of standards required for specific Conditional Uses set forth in Section 16.22 below;
- e. A recommendation to the Planning & Zoning Commission on whether to recommend approve, deny or approve with conditions the CUP Application; and
- f. A list of all conditions that the Zoning Administrator, with input from the ~~JUB~~ DRC , believe are reasonable and necessary to mitigate the likely adverse effects of the proposed Conditional Use.

B. CUP FINAL REVIEW AND DETERMINATION. Upon completion of the CUP Preliminary Review and the Zoning Administrator's issuance of the CUP Preliminary Review Report & Recommendation, the following process shall be followed:

- 1. The Town Clerk will place the CUP application on the agenda of the next available Planning and Zoning Commission meeting for ~~final~~ review and possible approval recommendation to Town Council.
- 2. The Town Clerk will schedule a public hearing for the CUP application according to all applicable notification and posting laws of the State of Utah at least 10 days before a scheduled meeting of the Planning & Zoning Commission.
- 3. A letter satisfying all notification requirements will be mailed out by the Town Clerk to all current property owners within 300 feet of the outer boundaries of the property where the proposed Conditional Use in the CUP application will take place.
- 4. All costs related to this notification will be at the CUP applicant's expense.
- 5. In an open and public meeting, the Planning and Zoning Commission will conduct the public hearing and perform the ~~Final~~ Review of the CUP application for compliance with:
 - a. the General CUP Review Criteria as set forth in Section 16.16, below, and

b. any applicable specific Standards for Conditions (By Use) as set forth in Section 16.22, below.

6. As part of its ~~Final~~ Review, the Planning and Zoning Commission shall closely consider the CUP Preliminary Review Report & Recommendation and especially the Zoning Administrator's recommendation and proposed conditions (if applicable) to be included in a CUP.

7. At the conclusion of the ~~Final~~ Review the Planning and Zoning Commission may recommend to the Town Council to:

a. Approve the CUP;

b. Approve the CUP with conditions; or

c. Determine that added conditions will not be able to properly mitigate adverse effects of the proposed use and therefor deny the CUP.

8. All findings of adverse effect and lack of mitigation options will be submitted in writing by the Planning and Zoning Commission to the Town Clerk to go in the applicant's file.

9. The Town Council at a regular or special meeting shall consider the record at the Planning and Zoning Commission hearing and meeting (no further testimony shall be considered unless remanded back to Planning and Zoning Commission per subsection 9d below); consider the recommendation of the Planning and Zoning Commission; and conduct a final review and:

a. Approve the CUP;

b. Approve the CUP with conditions;

c. Determine that added conditions will not be able to properly mitigate adverse effects of the proposed use and therefor deny the CUP; or

d. Remand application back to Planning and Zoning for further review and recommendation.

10. Following the issuance of a CUP, the applicant may apply for a building permit, if applicable.

C. CONDITIONAL USE STANDARD OF REVIEW. The Town shall not issue a CUP unless the Town Council ~~Planning & Zoning Commission~~ concludes that the CUP application, with possible conditions, can fully mitigate all identified adverse impacts and complies with the following

general standards for all conditional uses, as well any of the applicable specific use standards listed.

16.10 APPEAL OF CUP APPLICATION DETERMINATIONS

A. RIGHT OF APPEAL (STANDING). The CUP Applicant, ~~the Town~~ or an Adversely Affected Party may appeal the Town Council's Planning & Zoning Commission's decision on a CUP application to the Appeal Authority within fifteen (15) days of the determination. For purposes of this Section, a CUP is considered "determined" when it is issued in written form and signed by the Mayor Planning & Zoning Commission Chair and posted upon the Utah Public Notice Website.

B. FILING OF APPEAL (CONTENTS). An appeal under this Section shall be accomplished by completing the Town's then current administrative appeal form, paying the applicable "Appeal Fee" designated in the Town's Uniform Fee Schedule and submitting those items along with a written explanation of grounds upon which it believes the ~~Planning & Zoning Commission~~ Town Council erred in the granting or denying the CUP application along and ~~a copy~~ a list of all documents and exhibits which the appellant believes constitutes the record upon which their appeal is based (collectively "CUP Appeal Packet"). The Appellant shall provide a copy of all documents to the Town Clerk no later than 15 days prior to hearing.

C. APPEAL TO APPEAL AUTHORITY. Upon receipt of a complete CUP Appeal Packet from a person with standing, the Town Clerk shall transmit the same to the Town's Appeal Authority in compliance with the procedural requirements of VULU Chapter 6, and work with the Appeal Authority to schedule a hearing on the issues appealed within forty-five (45) days following the date the CUP Appeal Packet is accepted by the Town Clerk.

- 1.** The Appeal Authority shall not make its decision without first reviewing the decision of the Town Council ~~Planning and Zoning Commission~~.
- 2.** The Appeal Authority may affirm or reverse the decision of the ~~Planning and Zoning Commission~~ Town Council or may modify any conditions of approval set forth by them during their review.
- 3.** Once a decision has been made, the Appeal Authority shall present, in writing to the party making the appeal, the reasons for its' action, citing supporting factual evidence in the case for approval, denial, or modification.
- 4.** Upon a determination to sustain the denial of a CUP application, the applicant has the right to continue the appeals process in District Court as found in VULU Chapter 6 (See Section 6.18).

16.12 REVOCATION SUSPENSION OR NULLIFICATION OF AN ISSUED CUP

After inspection and determination by the Zoning Administrator for the need to revoke, suspend or nullify a CUP, a written notice of revocation, suspension or nullification will be sent to the CUP holder via certified mail at the address listed in the CUP application. Upon delivery of the notice, the CUP holder will have fifteen (15) days to appeal the revocation, suspension or nullification to the Town's Appeal Authority.

- A.* APPEAL PROCESS. The appeal may be accomplished by following the same process prescribed under Section 16.06 above.
- B.* APPELLANT'S DUE PROCESS RIGHTS. At the hearing on the revocation, suspension or nullification of a CUP, the CUP holder shall have the right to:
 - (1) be present, (2) be heard, and (3) be represented by legal counsel.
- C.* STANDARD OF REVIEW. The Appeal Authority, after notice and a hearing, may affirm or modify the Zoning Administrator's decision to revoke, suspend or nullify the CUP, if:
 - 1.* It determines that the CUP was obtained by misrepresentation or fraud;
 - 2.* Substantial evidence in the record exists that the conditions imposed upon said CUP have not been met; or
 - 3.* Substantial evidence in the record exists that the CUP holder failed to commence the Conditional Use by the Establishment Date or abandoned the Conditional Use for a period of one (1) year or longer.
- D.* WRITTEN DECISION. Once a decision has been made, the Appeal Authority shall present, in writing, the reasons for its determination citing supporting factual evidence in the case for reinstatement of the CUP or sustainment of the revocation.
- E.* CEASATION OF USE. The CUP holder shall immediately cease the Conditional Use on the property, upon receipt of the written determination affirming the revocation, suspension or nullification of the CUP.
- F.* CONTINUED APPEAL RIGHT. Upon a determination to affirm the revocation, suspension or nullification of the CUP, the CUP holder has the right to continue the appeals process in District Court as found in VULU Chapter 6 (See VULU 6.18).

16.14 EXPIRATION OF CUP APPROVAL

If construction of Buildings, Structures or improvements necessary to safely house an approved Conditional Use is not completed, or if the approved Conditional Use has not commenced by the Establishment Deadline (one (1) year), the Zoning Administrator holds the right to revoke, suspend or nullify a CUP unless, in the Zoning Administrator's judgment, substantial work has been accomplished toward the implementation of the approved Conditional Use or unless otherwise specified in the action granting the CUP.

16.16 USE ESTABLISHMENT EXTENSION OF AN ISSUED CUP

The Zoning Administrator may grant an extension of the Establishment Deadline for an issued CUP if shown good cause and upon the following conditions:

- A.* SINGULAR EXTENSION. Only one extension may be granted, and the maximum extension must not exceed twelve (12) months.
- B.* TIMING OF EXTENSION REQUEST. In order to obtain an extension, the CUP holder must apply in writing before the expiration of the original CUP. The application for an extension shall describe the cause for requesting the extension and must be submitted to the Town Clerk.

16.18 INSPECTIONS/INVESTIGATIONS

During construction, the building inspector and Zoning Administrator inspects the property on which a CUP is issued to ensure that all Buildings, Structures and improvements comply with the conditions of the CUP and building permit. The Zoning Administrator or delegate shall also conduct investigations in response to citizen complaints or at the direction of the Planning & Zoning Commission or Town Council to ensure all conditions of a CUP are being met.

16.20 GENERAL CUP REVIEW CRITERIA

An applicant for a CUP must demonstrate:

- A.* The CUP application complies with all applicable Town, State and Federal laws;
- B.* The Structures, Buildings and improvements associated with the proposed Conditional Use are generally compatible with surrounding structures of the zone in terms of use, scale, mass, and circulation;
- C.* The proposed Conditional Use is not detrimental to the public health, safety, and welfare of the and its residents;
- D.* The proposed Conditional Use is consistent with the Town's General Plan as amended;

- E.* Traffic conditions are not adversely affected by the proposed Conditional Use, including the existence or need for dedicated turn lanes, pedestrian access, and capacity of the existing streets;
- F.* There is sufficient emergency vehicle access;
- G.* The location and design of parking and off-street parking complies with Town standards for the zone;
- H.* A plan for fencing, screening, and landscaping to separate and mitigate the potential for conflict between the proposed Conditional Use and adjoining uses;
- I.* The site has or is planned to have sufficient utility capacity;
- J.* Exterior lighting complies with the lighting standards of the zone;
- K.* Possible impacts from the proposed Conditional Use on groundwater have or can be mitigated;
- L.* Slope retention and flood potential, within and adjoining the site, have been fully mitigated and is appropriate to the topography of the site;
- M.* Any possible issues regarding noise have been identified and will comply with Town standards;
- N.* Times of operation are consistent with underlying zone; and
- O.* Adequate general liability insurance coverage as ~~necessary~~ required by ordinance.

2. Amendment of Section 2.12 of VULU to Include “Adversely Affected Party” as a Defined Term. Sections 12 (Definitions) of Chapter 2 (General Provisions and Definitions) of the Virgin Uniform Land Use Ordinances is hereby amended to include “Adversely Affected Party” as a defined term as follows:

Adversely Affected Party. A person, individual, corporation, partnership, organization, association, trust, governmental entity or other form of legal entity other than a land use applicant who:

- A.* owns real property adjoining the property that is the subject of a land use application or land use decision; or
- B.* will suffer a damage different in kind than, or an injury distinct from, that of the general community as a result of the land use decision.

~~Joint Utility Board~~ **Development Review Committee (JUB DRC).** A Board created by resolution of the Town Council consisting of the Zoning Administrator, the Town Engineer, the Town’s Public Works Director, other members of the Town

Staff and representatives from the Hurricane Valley Fire District, other Special Service Districts, Public Utility Companies and Private Utility Companies providing utility services within the Town.

3. Amendment of Section 6.1.2 of VULU so that “Adversely Affected Party” and amendments in Section 16.06 related to appeals is consistent with amendments above. Sections 6.12 of Chapter 6 (Appeals to the Appeal Authority) of the Virgin Uniform Land Use Ordinances is hereby amended and restated in its entirety as follows:

6.12 APPEALS TO THE APPEAL AUTHORITY.

- A. *As a condition precedent to judicial review, each adversely affected ~~person~~ party may specifically challenge a Land Use Authority's decision, within fifteen (15) days of the land use decision and pay the related fee.*
- B. *The Appeal Authority shall determine the correctness of a decision of the Land Use Authority in its interpretation and application of a Land Use Ordinance.*
- C. *Only those decisions in which a Land Use Authority has applied a Land Use Ordinance to a particular application, person, or parcel may be appealed to the Appeal Authority.*
- D. *All documents and exhibits constituting the record upon which the action appealed was made shall be presented to the Town Clerk no later than 15 days prior to hearing ~~with the application for hearing~~.*
- E. *For every appeal, the applicant shall present to the Appeal Authority every theory of relief that it can raise in District Court.*
- F. *The Town may not require an adversely affected party to pursue duplicate or successive appeals before the same or separate appeal authorities as a condition of the adversely affected party's duty to exhaust administrative remedies.*
- G. *The Appeal Authority shall conduct each appeal and variance request as described by this Chapter.*
- H. *The person or entity who filed the appeal has the burden of proving that the Land Use Authority erred.*
- I. *The Appeal Authority shall respect the due process rights of each of the participants.*
- J. *After the hearing, the Appeal Authority shall issue a written decision within a reasonable time after the hearing.*

4. 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.

5. Conflicts/Repealer. This Ordinance repeals and supersedes the provisions of any prior Town ordinance in conflict herewith.

6. Effective Date. This Ordinance shall become effective immediately upon adoption by the Town Council and execution by the Mayor.

ADOPTED AND APPROVED BY THE VIRGIN TOWN COUNCIL this _____ day of May, 2023 based upon the following vote:

Council Person:

Paul Luwe	AYE	NAE _____	ABSTAIN	ABSENT _____
Mistie Baird	AYE	NAE _____	ABSTAIN	ABSENT _____
Leroy Thompson	AYE	NAE _____	ABSTAIN	ABSENT _____
Gene Garate	AYE	NAE _____	ABSTAIN	ABSENT _____
Jean Krause (Mayor)	AYE	NAE _____	ABSTAIN	ABSENT _____

VIRGIN TOWN
a Utah municipal corporation

ATTEST:

Jean Krause, Mayor

Krystal Percival, Town Clerk