

CHAPTER 1: GENERAL PROVISIONS

1.1 OVERVIEW

There are a number of activities related to the use, sale and development of land that have been determined by Federal and State law to be in the public interest for local government to oversee and regulate in order to bring about the safe, orderly creation (and maintenance) of communities. These include such activities as subdividing land into lots for sale, building structures, constructing roads, installing utilities, etc.

In order to effectively regulate these activities, communities are empowered to establish review and permitting processes. This document contains the review and permitting processes related to land development activities in Toquerville City. In addition, other sections of the Toquerville City Code that relate to land use, such as signage and design standards, are also included in this Code.

Chapters 6 and 7 of this Code constitute the Zoning Ordinance as contemplated in Title 10, Chapter 9a, Part 5, of the Utah Code. Chapter 8 of this Code constitutes the Subdivision Ordinance as contemplated under Title 10, Chapter 9a, Part 6 of the Utah Code.

1.2 SHORT TITLE

This Ordinance shall be known as the Toquerville Land Management Code, also known as Title 23 of the Toquerville City Code, and is herein referred to as “this Code.” It may be cited and pleaded under either designation.

1.3 STATEMENT OF PURPOSE

The purposes of this Code, and any rules, regulations and specifications hereafter adopted are to promote the public health, safety and general welfare through provisions designed:

- a. To preserve the natural beauty and topography of Toquerville City and to preserve the outstanding natural, cultural, or historical features, to ensure appropriate development with regard to these features and to assure the proper use and management of the natural beauty and resources of Toquerville City;
- b. To guide future growth, provide for the harmonious and coordinated development of the City (in conjunction with the Toquerville City General Plan), and to protect and conserve the value of land throughout the City and the value of buildings and improvements upon the land;
- c. To minimize the conflicts among the uses of land and buildings, and to prevent overcrowding of the land and undue congestion of population;
- d. To provide for efficient layout and use of building lots, roads and public services and utilities;
- e. To provide for adequate light, air, view corridors, and privacy; to secure safety from fire, flood, land slides and other geologic hazards, and other dangers;
- f. To prevent the pollution or degradation of air, streams, ponds and night sky; to insure the adequacy of drainage facilities; to safeguard the water table; to minimize site disturbance and removal of native vegetation and soil erosions; and to encourage and promote the conservation, wise use and

- management of natural resources throughout the municipality in order to preserve the integrity, stability and beauty of the community and value of the land;
- g. To avoid scattered and premature subdivisions which would cause insufficient public services and facilities, or necessitate an excessive expenditure of public funds for the supply of such services and facilities;
 - h. To inform the public of the requirements and conditions necessary to obtain approvals and permits to:
 - i. change or create property boundaries (subdivide land); or
 - ii. construct or modify buildings, signs, structures or utilities;
 - iii. alter the land or landscape;
 - iv. extract and process minerals on any property;
 - v. create or modify zoning classifications for a property;
 - vi. modify the General Plan.

1.4 INTERPRETATION

1.4.1 Greater Restrictions Prevail

In their interpretation and application, the provisions of this Code shall be considered as minimum requirements. Pursuant to Utah Code Ann. § 10-9a-104 (2005), where the provisions of this Code impose greater restrictions than any statute, other regulation, ordinance or covenant, the provisions of this Code shall prevail. Where the provisions of any statute, other regulation, ordinance or covenant impose greater restrictions than the provisions of this Code, the provisions of such statute, other regulation, ordinance or covenant shall prevail.

1.4.2 Definitions

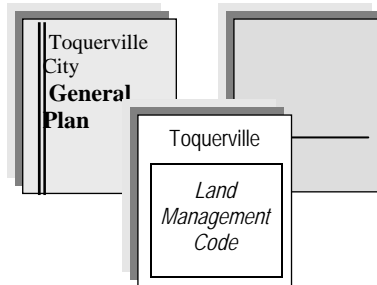
Whenever any word or phrase used in this Code is not defined herein, but is defined in related sections of the Utah Code or in the Toquerville City Code, such definition is incorporated herein and shall apply as though set forth herein in full, unless the context clearly indicates a contrary intention. Unless a contrary intention clearly appears, words used in the present tense include the future, the singular includes the plural, the term "shall" is always mandatory and the term "may" is permissive.

1.4.3 Additional Conditions May Be Imposed

Any development or construction activities shall require applications, fees, approvals, permits and compliance pursuant to this Code. To this end, all requirements, where possible, are expressly delineated in this Code or other applicable ordinances. However, since it is impossible to cover every possibility and there are some aspects which do not lend themselves to being easily articulated, this Code allows the Planning Commission and the City Council to impose reasonable conditions upon a developer in addition to those expressly set forth herein, so long as such conditions do not conflict with any requirements set forth in this Code or other applicable ordinances and comply with Utah Code Ann. § 10-9a-508 (2005).

1.5 COORDINATION WITH OTHER LAND USE DOCUMENTS

This Code, together with the Toquerville City General Plan shall guide the use of all land within the corporate boundaries of the City. The size and design of lots, the nature of utilities, the design and improvement of streets, the type and intensity of land use, and the provisions for any special facilities shall conform to the land uses shown in the Toquerville City General Plan and the standards established in this Code.



These 2 documents should be used in concert.

1.6 ALL APPROVALS MUST BE CONSISTENT WITH THIS ORDINANCE

All departments, officials and public employees of Toquerville City who are vested with the duty or authority to issue permits or licenses shall do so in conformance with the provisions of this Code and shall issue no permit or license for uses, buildings, or purposes where the same would be in conflict with the provisions of this Code and any such permit or license, if issued in conflict with the provisions of this Code, shall be null and void.

1.7 AMENDMENTS

The Toquerville City Council may, from time to time, in a manner consistent with the Toquerville City General Plan, amend any provision of this ordinance, but any such amendment shall not be approved or final action taken until after public notice and public hearing(s), pursuant to Utah Code (Annotated, Title 10, Chapter 9a) and Section 1.8 of this Code.

1.8 NOTICE

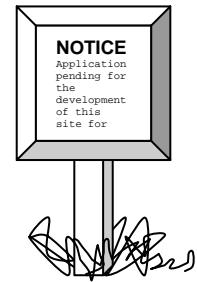
Whenever notice to adjoining property owners or the public is required by any Section of this Code, the notice shall be given in the following manner:

1.8.1 Notice to Applicant/Property Owner

For each land use application, the City shall notify the applicant of the date, time, and place of each public hearing and meeting to consider the application and of any final action on a pending application.

1.8.2.1 Posting of Notice

At least 10 days prior to the first public hearing on any application before the Planning Commission or City Council, notice shall be provided and posted by the City on the property affected by the application stating that an application concerning the development of that property has been filed, and stating the date, time and place of the hearing, and indicating that more detailed information concerning the application is available from Toquerville City offices. In addition, a copy of the notice shall be posted in the public places where notices of meetings are routinely posted.



1.8.4.2 Notice to Adjoining Property Owners

At least 10 days prior to the public hearing, the City Clerk shall mail notice to the owners of record of all properties located entirely or partly within three hundred (300) feet from any

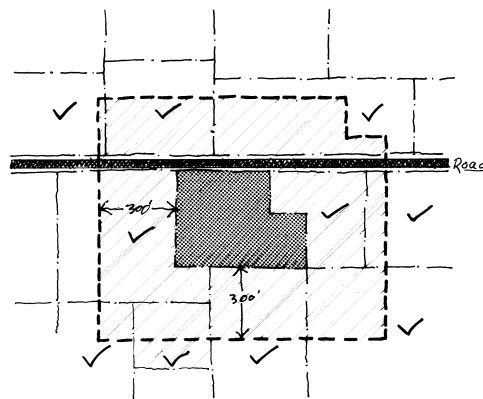


Figure 1.1: All of the properties checked have at least a portion within the 300' modification limit and require notice of landuse for shaded parcel.

boundary of the property subject to the application. The mailed notice shall be sent to the address appearing on the last completed real property assessment rolls in the office of the Washington County Recorder and shall state that the application has been filed, the nature of the application, and the time, place, and date of hearing on the application, and that more complete information is available at the City Offices. For purposes of satisfying “notice” requirements of Utah Code Ann. § 10-9a-205 (2005) those property owners within three hundred (300) feet from any boundary of the property subject to the application shall be deemed to be those “property owner[s] directly affected by the land use ordinance change” or proposed application.

The applicant shall provide the Planning Commission or City Council with a mailing list and two sets of mailing labels certified for accuracy by a title company of applicant’ choosing for all required properties. The applicant shall reimburse the City for the actual costs of mailing, including envelopes, postage and duplication costs.

1.8.5 Publication

Notice by publication *shall be given as required by Utah State Law.*

1.8.6 Notice to Condominiums

For condominium projects within the three hundred (300) foot radius from the applicant's property, notice shall be given to the president and/or secretary of the condominium owners association, rather than to all individual unit owners.

1.8.7 Defects in Notice

The notices to affected property owners are given as a convenience to them. Minor defects in mailing, or incomplete mailing, shall not be grounds for invalidating any permit or application, or for the delay of any hearing unless the Planning Commission or City Council shall find the defects in notice are such that the ability of interested persons to make a meaningful presentation of their concerns at the hearing has been impaired. *Any challenge to proper notice must be made within 30 days of the public hearing, public meeting or action pursuant to Utah Code Ann. § 10-9a-209 (2005).*

1.8.6 Vested Rights/Pending Ordinances

Except as otherwise provided in this section, a person who submits a complete application pursuant to the provisions of this Title is entitled to have such application considered on the basis of provisions in effect when the application is submitted.

- a. *Complete Application: An application shall be deemed "complete" when all materials required for the application have been submitted, as set forth.*
- b. *Substantial action on Application: If within one (1) year after an application has been submitted the applicant has not taken substantial action to pursue Approval of the application, the application shall expire and any vested rights there under shall terminate.*
- c. *Pending Ordinance Amendments: If a zoning map or text amendment to this Title which may affect an application is pending when the application is submitted, the applicant shall not be entitled to rely on such provisions but may be required to comply with newly enacted provisions, as set forth below.*
 1. *A proposed amendment shall be deemed "pending" when the enactment proposal first appears on a duly noticed Planning Commission or City Council agenda, whichever is sooner.*
 2. *An application affected by a pending amendment shall be subject to the following requirements:*
 - a. *The application shall not be acted upon until six (6) months from the date when the pending amendment was first noticed on a Planning Commission or City Council agenda unless:*
 1. *The applicant voluntarily agrees to amend his application to conform to the requirements of the proposed amendment; or*

2. *The proposed amendment is sooner enacted or defeated, as the case may be.*
- b. *If a pending amendment is enacted within six (6) months after being noticed on a Planning Commission or City Council agenda, an affected application which was filed while the amendment was pending shall conform to the enacted amendment.*
- c. *If a pending amendment to this Title is not enacted within six (6) months after being noticed on a Planning Commission or City Council agenda, the amendment shall no longer be considered pending and any affected application may be considered without regard to the previously pending amendment.*
- d. *Preservation of Vested Right*
 1. *An applicant who has a vested right under this Title shall proceed with reasonable diligence to exercise development rights authorized by an approved application. Failure to proceed with reasonable diligence on an approved application prior to the expiration date of such application, as set forth in this Title, shall terminate vested rights associated with such application.*
 2. *An applicant with vested rights shall continually conform to all conditions of approval of an application. An applicant's failure to do so shall constitute the applicant's knowing and willful waiver of the applicant's vested rights under such application.*
- e. *Extent of Vested Rights: An application approved under this Title only authorizes the thing applied for under the application.*
- f. *Termination of Vested Rights: A vested right may be voided if the City Council land use authority, on the record, finds that a compelling, countervailing public interest would be jeopardized by recognition of the vested right.*
- g. *Applicability of Generally Applicable Ordinances: Generally applicable provisions of this Title and other City ordinances and regulations shall apply to all property, notwithstanding the establishment of a vested right.*

CHAPTER 2: ADMINISTRATIVE AND DECISION-MAKING BODIES

2.1 PLANNING COMMISSION

2.1.1 Commission Membership And Quorum

The Toquerville City Planning Commission consists of five (5) members and one (1) alternate member. Members are appointed by the Mayor with the advice and consent of the City Council. Three (3) members of the five (5) shall be sufficient to constitute a quorum. The alternate member shall attend all meetings. Residency within the corporate boundaries of the City for at least one continuous year prior to appointment and attainment of at least 18 years of age shall be minimum requirements for any member of the Toquerville City Planning Commission.



2.1.2 Alternate Member

The Alternate Member shall attend all meetings and serve and vote in the absence of a member of the Planning Commission under rules established by the Commission.

2.1.3 Length of Term

Members of the Planning Commission shall serve terms of four (4) years. The terms shall be staggered so that only one (1) term shall expire each year. Terms expire on the thirty-first (31st) day of December. With the advice and consent of the City Council, the Mayor shall appoint an interim Planning Commissioner to fill vacancies that might arise, and such appointments shall be to the end of the vacating member's term.

2.1.4 Absence Deemed Resignation

Any Planning Commission member who is absent from two (2) consecutive regularly scheduled Commission meetings without prior notice to the Town Clerk and/or Chairman of the Planning Commission shall be deemed to have resigned from the Commission.

2.1.5 Powers

The Planning Commission shall have all necessary powers conferred on Planning Commissions pursuant to Chapter 9a of Title 10, Utah Code Annotated (1953, as amended).

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2.1.6 Chairman

The Chairman shall be elected by the Planning Commission, each calendar year at the first meeting of the year, and shall be a full voting member of the body.

2.1.7 Staff

In order to assist the Planning Commission in carrying out its duties, the Planning Commission Chairman may request the assistance of other employees or agents of the City through an appropriate request made to the Mayor.

2.1.8 Policies and Procedures

The Planning Commission shall adopt rules of policy and procedure consistent with this Chapter and State Law.

2.2 BOARD OF ADJUSTMENT

2.2.1 Board Membership And Organization

The Board of Adjustment shall consist of five members and such alternate members as the Mayor deems appropriate. Each member shall be appointed by the Mayor with the advice and consent of the City Council. The Board shall elect a Chairman and Vice Chairman from among themselves for a one year term. The Town Clerk shall serve as secretary to the Board. Residency within the corporate boundaries of the City for at least one continuous year prior to appointment and attainment of at least 18 years of age shall be minimum requirements for any member of the Toquerville City Board of Adjustment.

2.2.2 Length of Term

Each member is appointed for a term of four years. The terms of the members of the Board shall be staggered such that the term of only one member shall expire in any calendar year. Any member may be removed for cause by the Mayor upon written charges and after public hearing, if such public hearing is requested by the member. Any vacancy occurring on the Board, for whatever reason, shall be filled by appointment by the Mayor with the advice and consent of the Council, for the unexpired term of such member or alternate member.

2.2.3 Alternate Members

Alternate members shall serve and vote in the absence of a member or members of the Board of Adjustment under rules established by the Board. No more than two alternate members shall sit at any meeting of the Board.

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2.2.4 Absence Deemed Resignation

Any Board of Adjustment member who is absent from two (2) consecutive Board meetings without prior notice to the Town Clerk or Chairman of the Board of Adjustment shall be deemed to have resigned from the Board.

2.2.5 Meetings of the Board

All meetings of the Board shall be open to the public. The Board shall keep a tape recorded record of its appeals and its proceedings showing the vote of each member upon each question, members absent, members failing to vote, a record of the Board's examination of evidence and other official actions. The Board shall keep minutes of all meetings and proceedings. Minutes shall be filed with Clerk upon adoption by the Board. The written transcripts of the record shall be prepared by the Toquerville City Clerk upon the request of any interested party at the requesting party's expense made within thirty (30) days of filing of the Board's final decision and shall be a public record, together with other written documents, exhibits, etc. that the Board received. If requested and paid for by an applicant, the City shall utilize the services of a licensed court reporter to record and prepare a certified verbatim transcript of a Board proceeding.

2.2.6 Policies and Procedures

The Board shall adopt rules of policy and procedure consistent with this Chapter and State law. The rules shall be submitted to the City Council for approval and may be altered, amended, or changed in the same manner.

2.2.7 Duties and Powers of the Board

The Chairman or, in his absence, the vice Chairman, shall call meetings as needed and may administer oaths and compel the attendance of witnesses. Pursuant to Utah Code Ann. § 10-9a-701 (2005), the Board of Adjustment shall be considered the "Appeal Authority" for, and decide the following:

- a. Appeals of issues involving the interpretation or application of other sections of this Code by the City Council, the Planning Commission, the Zoning Administrator or other members of the City Staff. The Board of Adjustments shall hear only those decisions which have been actually applied to a particular application, person or parcel of land. The Board of Adjustments shall not render advisory opinions,
- b. Variances from the terms of this Code or the City's Construction and Design Standards for Public Improvements,
- c. If delegated by the City Council, requests for the determination of the existence, expansion, or modification of non-conforming uses.

2.2.8 Appeals

Appeals may be made to the Board of Adjustment by any person aggrieved by a final decision applying this Title, by the Zoning Administrator, City Council or Planning Commission. All appeals shall be made according to the following procedures:

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- a. The appeals shall be made within ten (10) days of the action or decision being appealed by filing written Notice of Appeal with the Toquerville City Clerk;
- b. The Notice of Appeal shall specify the grounds for the appeal and circumstances related thereto. Such notice shall set forth in detail the action and grounds upon which the applicant or other interested parties deem themselves aggrieved. A Notice failing to specify grounds for appeal may be summarily dismissed by the Board of Adjustment without prejudice;
- c. All documents and exhibits constituting the record upon which the action appealed was made shall be transmitted to the Town Clerk;
- d. The Board of Adjustment shall set the appeal for hearing to be held within a reasonable time from the day the appeal is received. Written notice of the date set for hearing the appeal shall be mailed to the applicant at least ten (10) days before the appeal hearing date;
- e. The filing of an appeal shall stay all proceedings and actions in furtherance of the matter appealed, pending decision of the Board of Adjustment. The stay shall exist unless the Board of Adjustment finds, after the Notice of Appeal has been filed, that the stay would cause imminent peril to life or property. In such case, proceedings shall not be stayed, other than by Restraining Order issued by the District Court.

2.2.9 Scope of Review & Standard of Review on Appeal

The Board of Adjustment shall limit its review on appeal to the record upon which the original action was based, including but not limited to, the original application, written recommendations from City Staff and the Planning Commission, letters, petitions, reports, or other technical data submitted by the applicant in furtherance of the application, and the minutes. When reviewing the City Council, Planning Commission, Zoning Administrator, or City Staff's interpretation of any section of this Code, the standard of review shall be that of correctness. When reviewing the City Council, Planning Commission, Zoning Administrator, or City Staff's application of any section of this Code or the granting/denial of a land use application, the standard of review shall be whether the decision appealed had a reasonable, factual basis apparent in the record.

The Board shall allow the appealing party or their designated representative and the decision-maker or their representative the opportunity to present appropriate oral argument in support of his position on appeal or response. Such oral argument may be limited as appropriate by the Board. The Board shall not receive or consider any new evidence in the form of exhibits, affidavits, or testimony other than the oral argument provided under this Section.

2.2.10 Variances

a. Purpose

A variance is intended to grant a property owner relief from the terms of this Code or other regulations of the City adopted by ordinance such as the City's Standard Specifications for Design and Construction where conditions are such (particular physical surroundings, shape, or topographical conditions) that compliance with the Code would result in significant hardship upon the owner, as distinguished from a mere inconvenience or increased financial difficulties. A variance may be requested for setback, side yard, lot size, site requirements, parking requirements, or other similar provisions of this Title that deprive the applicant of the reasonable

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use of his property when others similarly situated are entitled to make such use of their property

b. Review Procedure

1. APPLICATION

An application for variance review must be filed with the City Clerk, and the required fee paid in advance. If, in the course of subdivision or building permit review, it is determined that a variance is required or desired, all further action shall be stayed until the applicant shall have obtained the variance.

2. BOARD OF ADJUSTMENT REVIEW

The Board of Adjustment is designated as the “Appeal Authority” pursuant to Utah Code Ann. § 10-9a-701(2005), and shall review all applications for variances in a hearing called pursuant to Section 1.8 (Notice) of this Title. The Board of Adjustment shall grant or deny the variance pursuant to the standards and conditions set forth below. In granting a variance, the Board of Adjustment may impose additional requirements on the applicant that will:

- (i) mitigate any harmful affects of the variance; or
- (ii) serve the purpose of the standard or requirement that is waived or modified.

2.2.11 Standards for Review of a Variance Request

a. Before any variance may be authorized *all* of the following conditions shall be shown:

- 1. Literal enforcement of the ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of this Code or other provisions of the Toquerville City Code and the Standard Specifications for Design and Construction;
- 2. There are special circumstances attached to the property that do not generally apply to other properties in the same zone;
- 3. Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zone;
- 4. The variance will not substantially affect the City’s General Plan and will not be contrary to the public interest; and
- 5. The spirit of this Code and the City’s other land use ordinances will be observed and substantial justice done.

b. In determining whether or not enforcement of the land use ordinance would cause unreasonable hardship under Subsection 2.2.11(a)(1) of this Chapter, the Board of Adjustment shall not find an unreasonable hardship unless the alleged hardship: (1) is located on or associated

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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.

- c. In determining whether or not enforcement of the land use ordinance would cause unreasonable hardship under Subsection 2.2.11(a)(1) of this Chapter, the Board of Adjustment shall not find an unreasonable hardship if the hardship is self-imposed or economic in nature.
- d. The Board of Adjustment may not grant a “use” variance.

2.2.11 Burden of Proof

The party seeking the appeal or variance shall have the burden of proving that the City Council, Planning Commission, Zoning Administrator and/or City Staff erred (if on appeal) or that all of the conditions for a variance required by this Chapter and Utah Code Ann. § 10-9a-702 (if a variance has been requested).

2.2.12 Quorum, Voting of the Board

Four (4) members present shall be required to constitute a quorum appropriate to take any final action on appeal. The affirmative vote of three members of the Board shall decide all matters before the board.

2.2.12 Action Taken / Notice

- a. After hearing the appeal, the Board of Adjustment may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from and may make such order, requirement, decision or determination as ought to be made, and to that end shall have all the powers of the officer or body from which the appeal is made.
- b. Written Notice of the Board of Adjustment’s decision shall be served on applicant by mail and filed together with a certificate of service with the minutes of the Board of Adjustment in the City offices.

2.2.13 Final Decision.

The decision of the Board of Adjustments takes effect on the date when the Board issues a written decision, which may include findings of fact and conclusions of law, if requested by the applicant. Said written decision shall constitute a “Final Decision” for purposes of the applicants right to seek judicial review.

2.2.14 Judicial Review of Board’s Decision-Time Limitation

Any person aggrieved by any decision by the Board of Adjustment may file an action for relief there from in any Court of competent jurisdiction within thirty (30) days after the issuance of a Final Decision.

2.3 BUILDING DEPARTMENT

2.3.1 Authority and Responsibility

The Planning Commission Chairperson or the Zoning Administrator shall have the authority to enforce, interpret and administer this title.

2.3.2 Organization

The Planning Commission Chairperson and Zoning Administrator may be assisted, when appropriate, by the City Attorney, City Engineer, the City Planner, the Director of Public Works, the City Marshal, the City Building Inspector, and other City Staff as required. Only the Zoning Administrator shall have the authority to bind the Building Department in those areas where the Building Department has the responsibility to interpret this Title.

2.3.3 Planning Commission Staff

The Zoning Administrator shall support and assist the Planning Commission in carrying out their duties under this Title.