



Memorandum

To: Town Council
From: Thomas Dansie, Town Planner
Date: March 4, 2021
Re: Ordinance Revision: Title 10 Edits for Clarity and Consistency

Executive Summary

The Planning Commission has recommended revisions to Title 10 of the Town Code. This Title contains the Town's land use regulations. The changes are intended to make the code easier to read, and to ensure consistency with the state law. The changes improve clarity, ensure internal consistency, and make the code match current practices and processes.

The Town Attorney prepared a memo to the Planning Commission outlining the changes (attached).

Since the Planning Commission meeting, the Town Attorney has made a few additional minor clarifying revisions, as summarized below:

1. Deleted the definition for "commission" from 10-2. The code generally uses the terms "planning commission" and "historic preservation commission". The rare reference to just a "commission" was clear in the context which body it was referring to. Therefore, it makes the most sense just to delete the definition.
2. Revised the definition of "family" to include a group of up to four unrelated individuals, as required by state law.
3. Revised the last line of Section 10-5-3 regarding the removal of a PC member, as follows: "Cause is defined to mean a violation of any federal law or regulation, state law or regulation, or town ordinance; a failure to perform any duty or responsibility of a planning commission member; or a conviction of a felony or misdemeanor involving moral turpitude."
4. The PC should review the general plan every five years (rather than three).
5. Correct an inconsistent definition of the allowable holiday lighting period.
6. Specify that the town will allow the recording of a subdivision plat if a completion assurance has been accepted by the town.

Council Member Zumpft has also corrected a few typographical errors, and made the formatting of numbers more consistent.

The most recent version of the proposed changes is shown in the files shared with the Council via Google Drive. Please contact staff if you have any trouble accessing the most recent version.

There has been no public comment on the proposed revisions.

Analysis

Most of the changes being proposed are minor changes to improve readability and consistency. These changes do not alter current Town policy. However, there are a few proposed revisions that do change policy. The Council may wish to discuss these in more depth. These revisions include:

- Changes to the Town's policy statement regarding zone changes. The proposed new changes are intended to preserve the Town's legislative discretion in zone changes and to strengthen zone change decisions against potential appeal. (see section 10-3-1)
- Significant changes to the affordable housing requirements in Chapter 6A. These include:
 - Establishing a rent cap for affordable housing units (30% of a household's monthly income).
 - Adding an income limit (115% of area median income) for households who occupy affordable housing units.
 - Adding an option for required affordable housing units to be deeded to the Town with a reverter clause.
- Creation of a process for the Town to review lot combinations and lot line adjustments. (see Chapter 14)
- Creation a requirement that places responsibility on an applicant to ensure building permit applications are consistent with an approved Design/Development Review. (sees section 10-15-12)

There are several other sections where the Council may wish to discuss policy change, or direct the Commission to review. These include:

- Definitions and standards for accessory structures.
- 10-3-5: Changes to the notification policy for DCD actions to match current process.
- 10-9B-14(D): Clarification of standards for wildlife corridors.

The Council may wish to discuss these sections in more detail and give staff and the Planning Commission direction for future revisions, if needed.

Suggested Council Action

Staff recommends the Council review the proposed changes to Title 10. If the Council finds these changes will improve the effectiveness of Code by making it more clear, internally consistent, and consistent with state law, then staff recommends the Council adopt the proposed changes.

PLANNING COMMISSION MEETING MINUTES - JANUARY 6, 2021

1. Public Hearing: Ordinance Revision - Changes to Title 10 of the Town Code, impacting all chapters, intended to ensure compliance with state law policies and procedures, improve readability and understandability, improve organization, and eliminate unnecessary and redundant provisions:

Town Attorney Devin Snow presented a summary of the revisions made and clarified that the revisions were proposed to ensure compliance with state law, clarify nebulous language, and address redundancies.

Commission questions to staff: Ms. Bruno asked about the revisions that changed the minimum time allowed for short term rentals from 60 days to 90 days in certain parts of the code.

- The Village Commercial and Central Commercial zones currently had a blanket prohibition on short term rentals of fewer than 60 days, whereas other portions of the code (e.g.; Cottage Housing Overlay zone and Accessory Dwelling Units) had a minimum of 90 days for short term rentals. The revision changed the minimum short term rental period to 90 days across all portions of the code as an effort to remain consistent. The Commission was free to choose 60 days instead or just keep the code as-is. The Commission liked the 90-day application across all code.

Mr. Marriott was concerned about the revisions made to Title 3 in regard to the criteria for granting zone changes. He felt that changing the word “shall” to “should” gave the Town more leverage to deny a request without providing clear criteria that a zone change application would be required to meet.

- Mr. Snow explained that the criteria were still clearly included in the language, but the Town would have more legislative discretion if the word “shall” was revised to “should.”
- Ms. Bruno felt that she and her colleagues had an obligation to review ordinance revisions from the mindset of a public official of the Town, not necessarily from the mindset of a private party with private interests.

Ms. Bruno was curious about affordable housing standards in Chapter 6A. She knew of at least one instance of an individual occupying an affordable housing unit who commuted to a different city for employment. She suggested having more discussions about adding a provision to ensure that the people benefitting from the affordable housing stock were employed and invested in the community.

Questions to staff by members of the public: None were asked.

Motion made by Barbara Bruno to open the public hearing. Seconded by Tyler Young.

Bruno: Aye Young: Aye Rioux: Aye Burns: Aye

Marriott: Aye

Motion passed unanimously.

Comments from the public: No public comment was made.

Motion made by Ric Rioux to close the public hearing. Seconded by Mike Marriott.

Bruno: Aye Young: Aye Rioux: Aye Burns: Aye

Marriott: Aye

Motion passed unanimously.

Commission deliberation: Mr. Rioux asked if the Commission could revisit the language regarding protection of the wildlife corridor in the Valley Residential zone as recommended by the town attorney.

- Mr. Snow felt the language was vague and open ended but no specific revisions were made. The Commission could revise at any point to add more objective criteria, possibly in conjunction with a consultant who could make specialized recommendations.
- Mr. Burns felt that it would be prudent to look at protection of wildlife as more development encroached on wildlife corridors. He was in favor of more discussions in the future.

Ms. McComb arrived at 5:54 pm.

Mr. Rioux requested that the Commission also flag accessory dwelling units and the definition of an attached building for as a topic for future discussion.

The Commission agreed to discuss refining language regarding development in wildlife corridors in the VR zone, requirement for occupancy in affordable housing units, and building separation in regard to accessory dwelling units in a future work meeting. They agreed to move the Title 10 revisions forward as presented.

Motion made by Barbara Bruno that the Commission recommends that Town Council approve substantial revisions to title 10 of the Springdale Code. We have accomplished several goals with these revisions including compliance with state law, improved readability and understandability, inclusion of processes and procedures required under Utah law, improved organization, elimination of redundant, outdated, and conflicting provisions, and adoption of modern legal drafting principles such as the preference for shorter sentences, use of gender-neutral pronouns, a preference for singular over plural and the use of structure to improve readability. Seconded by Ric Rioux.

Bruno: Aye Young: Aye Rioux: Aye Burns: Aye

Marriott: No.

Motion passed.

V. LOWRY SNOW
CURTIS M JENSEN
LEWIS P. REECE
J. GREGORY HARDMAN
MATTHEW J. ENCE*
CAMERON M. MORBY *
JONATHAN P. WENTZ
W. DEVIN SNOW
JEFF R. MILES
SEAN J. ROMNEY
DEVON J. HERRMANN
VICTORIA CARLTON

912 WEST 1600 SOUTH, SUITE B-200
ST. GEORGE, UTAH 84770

TELEPHONE (435) 628-3688
FACSIMILE (435) 628-3275
E-MAIL: dsn@snowjensen.com
WEBSITE: www.snowjensen.com

OFFICES IN ST. GEORGE, CEDAR CITY AND KANAB

*Licensed in Utah and Nevada

Via Email Only

Chairman Jack Burns
Planning Commission Members
Town of Springdale
118 Lion Boulevard
Springdale, UT 84767

December 15, 2020

Dear Planning Commission Members:

At the direction of the mayor and town council, we have worked with Tom Dansie and have proposed substantial revisions to Title 10 of the Springdale Code. We are pleased to present these proposed revisions for your review and recommendation.

We have accomplished several goals with these revisions, including the following:

- Compliance with state law
- Improved readability and understandability
- Inclusion of processes and procedures required under Utah law
- Improved organization
- Elimination of redundant, outdated, and conflicting provisions
- Adoption of modern legal drafting principles, *e.g.*, a preference for shorter sentences, use of gender-neutral pronouns, a preference for singular over plural, and the use of structure to improve readability

Our proposed changes are shown in redline format in the enclosed documents. For your convenience, we have summarized the major changes below.

Chapter 1: General Provisions

- Update the certificate of occupancy process and associated terminology to reflect current practices

- Delete references to the Uniform Building Code and replace with the State Construction Code
- Remove unnecessary verbiage
- Remove redundant provisions requiring building permits (required under Springdale Code § 9-1-4), grading permits (required under Springdale Code § 10-15B-13), and sign permits (required under Springdale Code § 10-24-10)
- Clarify the process for development agreement requests
- Reserve legislative discretion in the council’s consideration of whether to approve a development agreement
- Clarify water right dedication process

Chapter 2: Interpretation and Definitions

- Adopt all land use definitions from state law
- Clarify the definition for “accessory structure”
- Remove redundant/conflicting definitions that are provided in state law
- Remove language that accomplishes anything other than to define a word or phrase

Chapter 3: Administration and Procedure

- Remove redundant notice requirements (*Where state law imposes specific requirements, as is true here, the best practice is to comply with the state law and remove mirrored provisions in the municipal code.*)
- Modify the legislative policy regarding the criteria for zone changes to retain full legislative discretion
- Clarify the effect of the town’s general plan
- Remove the formal process to petition for a change in Springdale’s land use code
- Remove the right to judicial review of a refusal to change Springdale’s land use code
- Move provisions regarding administrative appeals to Chapter 6
- Clarify guidelines regarding constitutional takings

Chapter 3A: Conditional Use Permits

- Enlarge the deadline for the planning commission’s recommendation regarding a conditional use permit request
- Remove the deadline for town council action on a conditional use permit request
- Remove legal standards that are dictated by state law (*Where state law imposes specific legal standards, as is true here, the best practice is to apply that standard without re-stating it in our ordinances.*)
- Clarify the process for appeals arising from CUP proceedings
- Clearly state that it is unlawful to engage in conditional uses without a required permit

Chapter 4: Enforcement and Penalties¹

- Remove an enforcement provision that applies only to the town and its officials and employees
- Reserve all remedies for any violations of land use ordinances (*i.e.*, nuisance abatement, civil penalties, criminal prosecution, and withholding of permits)

Chapter 5: Planning Commission

- Clarify that any rules and procedures prepared by the planning commission are to be approved by the town council
- Delete an appeal provision that is covered in Chapter 6

Chapter 6: Appeal Authority

- Specify which matters may be appealed to the authority
- Limit the individuals who may file an appeal
- Add procedures for requests for variances
- Add the state-mandated process² for appeals related to the amounts of fees

Chapter 6A: Affordable Housing

- Impose a rent cap (30% of the household's monthly income) for affordable units and for employee housing units
- Require that the affordable housing unit be occupied only as a primary residence
- Improve organization of the chapter
- Improve enforcement mechanisms
 - Define affordable housing fraud and state that it is unlawful
 - Impose criminal penalties for affordable housing fraud
 - The town can require a developer to make the affordable housing unit subject to a "reverter," which means that the property goes to the town if the affordability covenant is ever violated

Chapter 7: Zone Enactment and Map Adoption

- Change the word "districts" to zones
- Remove the parking overlay zone from the table of allowable zones

Chapter 7A: Permitted, Accessory, and Conditional Uses by Zone

- Clarification about the binding nature of the table of uses

¹ The town recently amended the enforcement chapter to allow civil penalties.

² Utah Code Ann. § 10-9a-510.

Chapter 8: Federal and State Lands Zone

- Minor edits for clarity and readability

Chapter 9A: Foothill Residential Zone

- Minor edits for clarity and readability
- “Yard” is changed to reflect current practice of using the word “Setback”
- Clarify the effect of the table of uses in Chapter 7A
- Minimum rental term increased to 90 days

Chapter 9B: Valley Residential Zone

- We did not modify Section 10-9B-14D, “Wildlife Corridors,” but we would recommend that the planning commission consider creating some objective standards that could be adopted in this ordinance to increase the enforceability of this section. As it is currently drafted, it may be too vague to enforce if the stakes are high enough.
- Minor edits for clarity and readability
- “Yard” is changed to reflect current practice of using the word “setback”
- Clarify the effect of the table of uses in Chapter 7A
- For clarity purposes, break zone into three subzones, VR-S (standard), VR-A, and VR-B
- Minimum rental term increased to 90 days

Chapter 9C: Small Lot Development Standards

- Minor edits for clarity and readability
- Change “yard” to “setback”
- Prefer singular to plural

Chapter 10: Agricultural (AG) Zone

- Clarify the effect of the table of uses in Chapter 7A
- Change “yard” to “setback”

Chapter 11A: Central Commercial (CC) Zone

- Clarify the effect of the table of uses in Chapter 7A
- Remove redundant provisions governing lighting (covered in the lighting chapter)

Chapter 11B: Village Commercial (VC) Zone

- Clarify the effect of the table of uses in Chapter 7A
- Change “yard” to “setback”
- Remove redundant provisions governing lighting (covered in the lighting chapter)

Chapter 12: Public Use (PU) Zone

- Clarify the effect of the table of uses in Chapter 7A
- Change “yard” to “setback”
- Remove redundant provisions governing lighting (covered in the lighting chapter)

Chapter 13C: Planned Development Overlay Zone

- Remove redundant provisions governing open space (covered in Chapter 19)
- Minor edits for clarity and readability
- Change required “guarantee of performance” to the more general “completion assurance”

Chapter 13D: Moderate Income Housing Development Overlay Zone

- Clarify that any development incentives are provided in the discretion of the town council
- Retain legislative discretion over development agreement provisions
- Minor edits for clarity and readability

Chapter 13F: Cottage Housing Overlay Zone

- Require final plats to be consistent with the approved project plan
- Minor edits for clarity and readability

Chapter 14: Subdivisions

- Update the definition of “subdivision”
- Remove provisions that are redundant with state law (amendments and dedications)
- Establish a process for lot consolidations
- Establish a process for lot line adjustments

Chapter 14B: Subdivision Improvements

- Update allowable completion assurances to conform to state law
- Establish a process for partial releases of completion assurances, as required by state law

Chapter 14C: Single Lot Development

- Establish development standards for single lots

Chapter 15: Design/Development Review

- Require building permit application materials to be consistent with DDR approval
- Make it clear that the applicant has the ultimate responsibility of ensuring that a project is consistent with the land use code during the DDR process, the building permit process, and construction

Chapter 15A: Building Height

- Move a provision related to DDR to Chapter 15

Chapter 15D: Residential and Agricultural Regulations

- Minor edits to for clarity and readability

Chapter 15E: Solar Energy Systems

- Declare that an abandoned solar panel is a nuisance, which allows the town to proceed with nuisance abatement procedures in the event that any panel is abandoned

Chapter 16: Architectural Standards and Guidelines

- Minor edits for clarity and readability
- Remove redundant provisions related to the town's color palette (Ch. 17)
- Remove redundant provisions related to exterior lighting (Ch. 15C)

Chapter 18: Landscaping

- Remove a provision that allowed the DCD to waive requirements for a landscaping plan
- Remove unnecessary requirements within the landscaping plan
- Remove provisions related to the nonexistent "Beautification Committee"
- Delete provisions requiring private property owners to cultivate public trees
- Specify that tree planting, removal, and trimming in public parks will be at the direction of the director of parks and recreation

Chapter 19: Open Space

- Update terminology ("floodplain" = "floodway")
- No major changes because the town is working on preparing a new open space chapter

Chapter 20: Supplementary and Qualifying Regulations

- Change "yard" to setback to be consistent with the rest of the land use code
- Remove redundant sewer requirements
- Move requirement for curb, gutter, and sidewalks to new Chapter 14C

Chapter 21: Nonconforming Uses

- Remove a provision that allowed for a modification of use
- Remove a section that applies to signs

Chapter 22: Special Uses

- Change definition of Private Outdoor Event so that it includes private events that are held on public property
- Clarify aesthetic requirements for assisted living facilities; remove inapplicable provision
- Remove redundant requirements for assisted living facilities
- Remove provisions applicable to bed and breakfasts
- Remove “accessory use” provisions
- Remove redundant provisions regarding farm animals (Ch. 15D)
- Remove provisions related to mobile homes
- Clarify provisions related to open air displays
- Impose specific insurance requirements for farmer’s markets

Chapter 23: Parking Regulations

- Clarify that the parking requirements apply any time a use is changed on property, such that additional parking is required
- Change “yard” to setback to be consistent with the other parts of the land use code

Chapter 24: Sign Regulations

- Change Rockville/Springdale Fire District to Hurricane Valley Fire District
- Modify the exemption for a temporary commercial sign (*i.e.*, a “for rent” sign) to make it clear that the exemption does not apply where the property is a transient lodging facility

Chapter 25: Official Street Map

- Remove outdated provisions related to alleys and easements

CONCLUSION

We wish to emphasize that once these changes are adopted, future upkeep and maintenance will always be necessary, primarily because state law changes frequently. The improved organization of these ordinances will allow for easier upkeep and maintenance. It will be important to keep apprised of changes during each legislative session so the town can make any necessary adjustments.

In addition, the code will likely need to be adjusted from time to time in response to new circumstances and situations. We believe that the improved organization of the code will also make these minor and routine changes much easier.

We have appreciated this opportunity to propose these revisions to the Springdale Land Use Code. We look forward to discussing these revisions with you in a public meeting. In the

meantime, if you have any questions about any of the proposed changes, you are welcome to contact us.

Sincerely,

SNOW JENSEN & REECE, P.C.

/s/ W. Devin Snow

J. Gregory Hardman

W. Devin Snow

Enclosures