

# Chapter 29.01. Zoning.<sup>1</sup>

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### **29.01.010. Short Title**

This Ordinance shall be known and may be cited as the “Brigham City Zoning Ordinance” and may be identified within this document and other documents as “the Ordinance,” “this Ordinance” “Zoning Ordinance,” or “Land Use Ordinance.” This Ordinance shall be considered and may be identified as a Brigham City Land Use Ordinance, as defined by the Act.

### **29.01.020. Purpose.**

This Title is designed and enacted for the purpose of promoting the health, safety, morals, convenience, order, prosperity and welfare of the present and future inhabitants of Brigham City, Utah, including among other things, the lessening of congestion in the streets, or roads, securing safety from fire and other dangers, providing adequate light and air, classification of land uses and distribution of land development and utilization, protection of the tax base, securing economy in governmental expenditures, fostering the agricultural and other industries, and the protection of urban development. The Land Use Ordinance is intended to carry out the goals and policies of the General Plan.

### **29.01.030. Applicability.**

The provisions of the Zoning Ordinance apply to all private and public development within the corporate limits of the City.

### **29.01.040. Minimum Requirements.**

The provisions of this Title represent the minimum requirements necessary to advance its stated purposes. Unless otherwise specified within the ordinance, it does not preclude adding standards and requirements necessary to achieve the policies of the General Plan, the purposes of this Title, or protect the public health, safety, peace, morals, and general welfare.

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<sup>1</sup> Section 29-01 - 29-09 completely rewritten upon approval of Ordinance No. 07-13, dated 7/19/07

#### **29.01.050. Conflict.<sup>2</sup>**

A. Conflict with Other Local Regulations. This Title shall not nullify the more restrictive provisions of covenants, agreements or other titles or laws, but shall prevail notwithstanding such provisions which are less restrictive.

B. Conflict with State or Federal Regulations. If the provisions of this Title are inconsistent with those of the state or federal government, the more restrictive provision shall prevail, to the extent permitted by law.

C. Conflict with Private Restrictions. It is not the intent of this Title to interfere with, abrogate or annul any easement, covenant, deed restriction or other agreement between private parties. If the provisions of this Title impose a greater restriction than imposed by a private agreement, the provisions of this Title shall prevail. If the provisions of a private agreement impose a greater restriction than this Title, the provisions of the private agreement shall prevail. Brigham City does not enforce private covenants.

D. Conflict with Development Agreements. To the extent there is an inconsistency between this Title and a development agreement, the development agreement shall prevail. If the provisions of the development agreement are inconsistent with those of the state and federal government, the more restrictive provision shall prevail, to the extent permitted by law.

1. A development agreement may be negotiated and executed between a developer and the City to set forth the specific requirements, elements and any other aspects of a development, including vesting of zoning and uses, aesthetic standards and requirements.

2. The City Council has the sole authority to approve a development agreement. The Council may request a review and recommendation from the planning commission regarding the land use provisions of the development agreement.

3. All development agreements, upon proper execution, shall be recorded with the Box Elder County Recorder's Office, shall run with the land, and shall be binding on any subsequent owners, successors or assigns of the person entering into the agreement.

E. Severability. The chapters, parts, sections, paragraphs, sentences, clauses, and phrases of this Title are hereby declared to be severable. If any chapter, part, section, paragraph, sentence, clause, or phrase of this Title is declared invalid by a court of competent jurisdiction, or deleted through amendment or repeal, such invalidation or deletion shall not affect the remaining parts of this Title.

#### **29.01.060. Prohibitions.**

A. No lot may be sold, transferred, financed, or otherwise exchanged unless and until it has been created in conformance with the provisions of this Title and stated law.

B. No land, building, or structure may be developed, used, occupied, erected, moved or altered without conformance with the provisions of this Title and state law.

#### **29.01.070. General Plan Mandate.**

Land development shall be consistent with the General Plan. The City's administration and its departments shall carry out the mandate of the General Plan when reviewing project proposals, and development plans.

A. Planning Commission Implementation - The Planning Commission shall not approve any project for which it cannot substantiate a finding that the project is consistent with the goals, policies and implementation programs of the General Plan.

B. Appeal Authority Implementation - The Appeal Authority shall not approve any variance request for which it cannot substantiate a finding that the project is consistent with the goals, policies and implementation programs of the General Plan.

C. Relationship of the General Plan to the Land Use Ordinance - The General Plan is the adopted policies of the Brigham City Council. The General Plan represents a lengthy public participation process and incorporates long range goals, identified policies, and an implementation program. The content of the General Plan may be cited as a basis for making decisions or as a part of the finding to support actions initiated by this Land Development Code. The General Plan is adopted as a part of this code by reference. The General Plan provides the policies that enable the specific regulations of the Land Development Code to be carried out. Implementation measures in the General Plan provide direction for specific measures within the Land Development Code. When there is a conflict between the General Plan and the Land Development Code, if the General Plan provides precise development standards, the

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<sup>2</sup> Ordinance No. 08-20, dated 11/20/08

General Plan is to be used. If the General Plan provides policy language and no specific development standards, the Land Development Code's specific measures are to prevail.

**29.01.080. Effect on Previous Titles and Maps.**

The existing titles covering zoning, in their entirety, and including the maps heretofore adopted and made a part of said titles are hereby superseded and amended to read as set forth herein; provided, however, that this Title, including the attached map, shall be deemed a continuation of previous titles and not a new enactment, insofar as the substance of revisions of previous titles is included in this Title, whether in the same or in different language; and this Title shall be so interpreted upon all questions of construction relating to tenure of officers and boards established by previous titles and to questions of conforming or nonconforming uses and buildings and structures, and to questions as to the dates upon which such uses, buildings, or structures became conforming or nonconforming.

**29.01.090. State and Federal Property.**

Unless otherwise provided by law, and only to the extent required by Utah Code, Section 10-9a-304 or successor law, shall be construed as giving the Planning Commission or the City Council jurisdiction over properties owned by the State of Utah or the United States government.

**29.01.100. Property Owned By Other Governmental Units.**

Each County, municipality, school district, charter school, special district, and political subdivision of the state shall conform to any applicable land use ordinance of Brigham City installing, constructing, operating, or otherwise using any area, land, or building situated within the City only to the extent required by Utah Code, Section 10-9a-305 or successor law.

**29.01.110. Building Permit Required.**

The construction, alteration, repair, or removal of any building, structure, or part thereof as provided or as restricted in this Title shall not be commenced or continued except after the issuance of a zoning permit by the Community Development Department and a written permit from the Building Division. Work not started within one year will require a new permit.

**29.01.120. Occupancy Permit Required**

Land, buildings or premises in any district shall hereafter be used only for a purpose permitted in such district and in accordance with district regulations. A permit or occupancy shall be issued by the Building Division to the effect that the use, building or premises will conform to provisions of this and related titles prior to occupancy, for any building erected, enlarged or altered structurally, or the occupancy or use of any land, except for permitted agricultural uses. Such a permit is needed whenever use or character of any building or land is to be changed. Upon written request from the owner, a permit shall be issued covering any lawful use of buildings or premises existing on the effective date of this amendment, including nonconforming buildings and uses.

**29.01.130. Site Plans Required.**

A detailed site plan, with scale and sheet size determined by the Community Development Department, shall be filed as part of any application, prior to request for a zoning permit. It shall show, where pertinent:

- A. Scale of plan, and direction of north point.
- B. Lot lines, adjacent streets, roads, rights-of-way.
- C. Location of all existing structures on subject property and adjoining properties, with utility lines, poles, etc., fully dimensioned.
- D. Location of proposed construction and improvements, with location and dimension of all signs.
- E. Motor vehicle access, circulation patterns, with individual parking stalls, and curb, gutter, and sidewalk locations.
- F. Necessary explanatory notes.
- G. Name, address, telephone number of builder and owner.
- H. All other information required as determined by the Community Development Department.

**29.01.140. Inspection.**

The Community Development Department is authorized to inspect or to have inspected all buildings and structures in the course of their construction, modification or repair, and to inspect land uses

to determine compliance with zoning title provisions. The Community Development Department or any authorized employee of the City shall use the right to enter any building for the purpose of determining the use, or to enter premises for the purpose of determining compliance with the said Title, provided that such right of entry is to be used only at reasonable hours. In no case shall entry be made to any occupied building in the absence of an owner or tenant thereof without written permission of an owner, or written order of a court of competent jurisdiction.

**29.01.150. Completion of Requirement Improvements.**

A. For uses subject to Chapters 29.06, 29.24, or 29.25, any improvements required under this Title, including but not limited to, curb, gutter, sidewalk, fences, landscaping, streets, parking, and flood control requirements shall be satisfactorily installed prior to the issuance of a certificate of occupancy by the Building Division, or if a certificate of occupancy is not required, prior to the issuance of a business license for the land being developed. In lieu of actual completion of such improvements prior to the issuance of a certificate of occupancy or business license, a developer may file with the City Council a cash bond, surety bond, letter of credit, or escrow agreement in an amount specified by the City Engineer to ensure completion of such improvements within one year. The bond may be extended by the City Council upon request. Upon completion of the improvements for which a bond or escrow agreement has been filed, the developer shall call for inspections of the improvements by the Community Development Department. Upon approval of the City Council following a recommendation of the Planning Commission, and in lieu of the bond requirements of this Section, the builder or developer may be permitted to execute an agreement in a form acceptable to the City's Attorney's Office, deferring any of the required improvements.

B. Inspection shall be made within a reasonable time upon request. If the inspection shows the City standards and specifications have been met in the completion of such improvements, the bond or agreement shall be released within a reasonable time from the time of inspection. If the bond agreement is not released, refusal to release and the reasons therefore shall be given to the developer in writing within a reasonable time from the time of the inspection. The bond may be partially released based upon the percentage of completion of the required improvements.

C. If the City Council determines that the issuance of a certificate of occupancy or a business license prior to completion of any required improvements may be injurious to the health, safety, or welfare of the City or its inhabitants, it may refuse to accept a bond or deferral agreement in lieu of actual completion of required improvements or may limit the bond or agreement to a period of less than one year.

**29.01.160. Enforcement.**

The Community Development Department is authorized as the enforcing officer for this Title, and shall enforce all provisions, entering actions in court if necessary, and his failure to do so shall not legalize any violations of such provisions. The governing body may, by resolution or title, from time to time entrust administration of this Title, in whole or in part, to another officer of the local jurisdiction, without amendment to this Title.

**29.01.170. Nuisance and Abatement.**

Any building or structure erected, constructed, altered, enlarged, converted, moved or maintained contrary to provisions of this Title, and any use of land, building or premise established, conducted or maintained contrary to provisions of this Title shall be, and the same hereby is, declared to be unlawful and a public nuisance; and the local attorney shall, upon request of the governing body, at once commence action or proceedings for abatement and removal of enjoinderment thereof in a manner provided by law, and take other steps and apply to such courts as may have jurisdiction to grant such relief as will abate and remove such building or structure, and restrain or enjoin any person, firm, or corporation from erecting, building, maintaining, or using said building or structure or property contrary to the provisions of this Title. The remedies provided for herein shall be cumulative and not exclusive.

**29.01.180. Penalties.**

Any person, firm or corporation (as principal, agent, employee or otherwise) violating, causing, or permitting violation of the provisions of this Title shall be guilty of a misdemeanor, and punishable as provided by law. Such person, firm, or corporation intentionally violating this Title shall be deemed to be guilty of a separate offense for each day during which any portion of any violation of this Title is permitted or continued by such person, firm, or corporation, shall be punishable as herein provided.

**29.01.190. Licensing.**

All departments, officials and public employees of the local jurisdiction which are vested with duty or authority to issue permits or licenses shall conform to the provisions of this Title and shall issue no permit or license for uses, buildings, or purposes where the same would be in conflict with the provisions of this Title and any such permit or license, if issued in conflict with the provisions of this Title, shall be null and void.

**29.01.200. Fees.**

Fees may be charged applicants for building, occupancy, and conditional use permits, design review and planned unit development approval, planning commission and board of adjustment hearings, and such other services as are required by this Title to be performed by public officers or agencies. Such fees shall be established and amended by resolution by the legislative body and be in amounts reasonably needed to defray costs to the public.