ORDINANCE NO. 2017-02

AN ORDINANCE OF IVINS CITY, UTAH, AMENDING TITLE 16 OF OF THE IVINS CITY CODE ENTITLED "ZONING REGULATIONS"

WHEREAS, recent decisions by the Utah Supreme Court have clarified the distinction between legislative and administrative decisions made by the City Council;

WHEREAS, the Ivins City Council desires to reflect those clarifications by making certain amendments to its Zoning Ordinance;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF IVINS CITY, STATE OF UTAH:

SECTION 1. The Title 16 of the Ivins City Code entitled "Zoning Regulations" is hereby amended as follows:

TITLE 16

ZONING REGULATIONS

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CHAPTER 3

LAND USE AUTHORITIES AND DECISION MAKING

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16.03.102: City Council:

(1) Powers and Duties. For purposes of this title, the city council shall:

(a) As the legislative body of the city, adopt ~~and initiate~~ or amend~~ments to~~ the general plan~~,~~ and all elements of the general plan, including but not limited to a land use element, a transportation and traffic circulation element, and a moderate income housing element.

(b) As the legislative body of the city, adopt ~~and initiate~~ or amend~~ments~~ ~~to the~~ land use ordinances, including this title.

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(Ord. 2017-02, 2017)

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CHAPTER 4

LAND USE ORDINANCE APPLICATIONS AND DECISIONS STANDARDS

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16.04.102 Decision Making Standards. The decision making standards set forth in this chapter are provided based on the distinction between legislative and administrative proceedings. Legislative proceedings establish new law while administrative proceedings implement a law already in existence ~~public law and policy that is applicable generally, while administrative proceedings apply such law and policy to factually distinct, individual circumstances~~.

(1) Legislative Proceedings. The city council is ~~identified~~ hereby identified to be the only land use authority of the city authorized to render a decision on any ~~applications determined to be a~~ legislative matter and subject to a legislative proceeding. The following types of applications are hereby declared legislative matters and subject to legislative proceedings:

(a) General plan amendment applications.

(b) Land use ordinance amendment applications, including zoning ordinance and subdivision ordinance amendment applications.

(c) Zoning ~~districts~~ map amendment applications (rezones), including site-specific rezones.

(d) Official map amendment applications.

(e) Temporary land use regulations.

(2) Legislative Proceedings; Decisions Standards. A decision regarding a legislative proceeding shall be based on the "reasonably debatable" standard:.~~, as follows:~~

(a) The city council shall determine what action, if any, in its judgment and legislative discretion, is necessary to reasonably promote the ~~public~~ interest~~, conserve the values of other properties, avoid incompatible development, encourage appropriate use and development, more fully implement and achieve the purposes of the general plan and other policies of the city, and promote~~ ~~the~~ and general welfare of the city and its residents.

(b) In rendering a decision for a legislative proceeding, the city council may consider the following:

(i) Reports, information and testimony presented at public hearings or meetings when the legislative matter was considered; and

(ii) The personal knowledge of council members regarding the various conditions and activities bearing on the issue, provided those items of personal knowledge are stated and discussed on the record when the legislative matter was considered. ~~including, but not limited to, the effect of guiding growth and development in an orderly manner, providing for the implementation of the general plan, preserving natural beauty and resources, including open space, wildlife habitat and clean water, providing opportunities for the establishment of appropriate business activities to meet the needs of residents and others, preventing the overcrowding of land, preventing damage and injury from disasters such as fire, flood, geologic and seismic hazards, and other dangers, directing and managing the type~~

~~distribution and intensity of uses and activity, ensuring the adequacy and sufficiency of required public services, facilities and amenities, protecting loandowners from potential adverse facilities and amenities, protecting landowners from potential adverse impacts from adjoining uses, and securing economy and efficiency in the allocation and expenditure of public resources and funds~~.

(c) The ~~city council shall identify and include the basis, and any findings of fact, for the decision in the~~ public record of the meeting when the legislative matter is considered shall include why the city council believes its decision is in the interest of the general welfare of the city and its residents.

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(Ord. 2017-02, 2017)

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16.05.106 ~~Criteria for~~ Approval of General Plan Amendments, Land Use Ordinances, Zoning Map or Official Map Amendments. As legislative decisions, these decisions follow the decision making standards set forth in section 16.04.102 above. ~~In considering a general plan amendment application, the commission and city council shall consider the following approval requirements:~~

~~(1) The effect of the proposed amendment on the public health, welfare and safety of city residents.~~

~~(2) The proposed amendment advances the interests of the city and provides a benefit to city residents.~~

~~(3) The location of the proposed amendment is suitable for the usews and activities allowed by the proposed amendment, and the city, and all other service providers, as applicable, are capable of providing all infrastructure, facilities and services required by the proposed uses and activities in a cost effective and efficient way.~~

~~(4) Compatibility of the proposed uses with nearby and adjoining properties.~~

~~(5) The suitability of the properties for the uses requested.'~~

~~(6) The effect of the proposed amendment on the existing goals, objectives and policies of the general plan, and listing any revisions to all land use ordinances, and any other ordinances, required to implement the amendment.~~

~~(7) The community benefit of the proposed amendment.~~ (Ord. 2017-02, 2017)

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16.05.111 Repealed. ~~Criteria for Approval of Land Use Ordinance, Zoning Districts Map or Official Map Amendment:~~ ~~No amendment to a land use ordinance, zoning districts map or official map may be recommended by the commission, or approved by the city council, unless such amendment is found to be consistent with the general plan, as required by 16.05.101 of this chapter. In considering a land use~~

~~ordinance, zoning districts map or official map amendment, the commission and city council shall consider the following approval requirements:~~

~~(1) The effect of the proposed amendment on the public health, welfare and safety of city residents.~~

~~(2) The proposed amendment advances the interests of the city and provides a benefit to city residents.~~

~~(3) The location of the proposed amendment is suitable for the usews and activities allowed by the proposed amendment, and the city, and all other service providers, as applicable, are capable of providing all infrastructure, facilities and services required by the proposed uses and activities in a cost effective and efficient way.~~

~~(4) Compatibility of the proposed uses with nearby and adjoining properties.~~

~~(5) The suitability of the properties for the uses requested.'~~

~~(6) The effect of the proposed amendment on the existing goals, objectives and policies of the general plan, and listing any revisions to all land use ordinances, and any other ordinances, required to implement the amendment.~~

~~(7) The community benefit of the proposed amendment.~~ (Ord. 2017-02, 2017)

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CHAPTER 30

APPEALS ~~AUTHORITY AND PROCEDURES~~

16.30.101 Purpose. This chapter is provided to ~~allow the~~ direct an applicant, a board, or officer of the city, or any other person who believes they are adversely affected by a decision of a land use authority, to appeal ~~the~~ a land use decision to the appropriate appellate body and to set forth the procedures for such appeal. ~~to an appeal authority, identified by this chapter~~. ~~(Ord. 2005-13, 2005)~~ (Ord. 2017-02, 2017)

16.30.102 Legislative Appeals; Administrative Appeals. ~~Appeal Authority~~.

(1) Legislative Appeals. Appeals from land use decisions that are identified as legislative matters and subject to legislative proceedings in section 16.04.102 above shall only be appealed to the District Court pursuant to section 10-9a-801 of the Utah Code. The city's appeal authority shall have no jurisdiction to consider any such legislative matter.

(2) Administrative Appeals. The city's administrative law judge, as provided under title 2, chapter 5, "Administrative Hearings," of this code is hereby designated as the appeal authority required by section 10-9a-701 of the act, to hear and decide requests for variances and appeals from administrative decisions. ~~applying the land use ordinances. (Ord. 2007-35, 2008)~~ (Ord. 2017-02, 2017)

16.30.103 Maximum Time to File Appeal.

(1) District Court Review. Any person adversely affected by a final decision of a legislative land use decision or, after exhausting administrative remedies on an

administrative decision, must file a petition for review of the decision with the district court within thirty (30) days after the city's land use decision is final.

(2) Administrative Appeal. Any person, including the applicant for any administrative land use application approval, license, or permit, and any board or officer of the city, aggrieved by a decision of a land use authority's administrative decision ~~administering or interpreting the land use ordinance~~ may, within ten (10) calendar days of the decision, appeal the administrative decision to the city's appeal authority identified by section 16.30.102(2) of this chapter. ~~(Ord. 2007-35, 2008)~~ (Ord. 2017-02, 2017)

16.30.104 Requirements for an Appeal Petition.

~~(1)~~ Any ~~An~~ appeal petition of a land use ~~authority's~~ decision shall clearly identify the alleged error ~~in any order, requirement, decision or determination~~ made by the land use authority ~~in the administration or interpretation of the land use ordinances~~.

~~(2) Only those decisions in which a land use authority has applied the requirements of the land use ordinances to a particular application, person, lot or parcel may be appealed to an appeal authority. (Ord. 2005-13, 2005)~~ (Ord. 2017-02, 2017)

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16.30.106 ~~Application~~ Appeal Petition Required.

(1) ~~An appeal petition, or application for an appeal, of a land use authority's decision shall be made on the application.~~ A petition to appeal a land use decision shall be made in the form and manner required by the applicable appellate body, depending on whether it is an appeal from a legislative decision to district court or an appeal from an administrative decision to the city's appeal authority.

(2) ~~An appeal application shall be determined complete by the zoning administrator, as provided by chapter 13 of this title. If an application for an appeal is determined to be incomplete, the zoning administrator shall comply with the requirements of chapter 13 of this title. (Ord. 2005-13, 2005)~~ The question whether a petition to appeal is complete or not shall be determined by the applicable clerk of the appellate body with whom the petition is filed. (Ord. 2017-02, 2017)

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16.30.109 Burden of Proof. Any person bringing an appeal and alleging an error of a land use authority's decision ~~administering or interpreting the land use ordinances~~ has the burden of proof that the land use authority erred. ~~(Ord. 2005-13, 2005)~~ (Ord. 2017-02, 2017)

16.30.110 Record on Appeal. The city shall transmit to the applicable appellate body the record on appeal, including the minutes, findings, orders, and, if available, a true and correct transcript of the proceedings. If the proceedings were tape recorded, a transcript of the tape recording(s) is a true and correct transcript for purposes of this requirement.

I (a) If there is a record, the appellate body's review shall be limited to the record as provided above. The appellate body shall only consider the materials originally presented before the land use authority in making the decision that is the subject of the appeal. The appellate body may not accept or consider any evidence outside the record unless that evidence was offered below and the appellate body determines that it was

improperly excluded.

(b) If there is no record, the appellate body may call witnesses and take evidence. (Ord. 2017-02, 2017)

16.30.111 Standard of Review for Appeals.

(1) Legislative decisions. A decision, ordinance, or regulation involving the exercise of legislative discretion is valid if it is reasonably debatable that the decision, ordinance, or regulation promotes the general welfare of the city and is not otherwise illegal. ~~Each appeal authority identified by this chapter shall hear and review all appeal matters "on the record", including the review of all factual matters. Each appeal authority shall only consider the materials originally presented before the land use authority in making the decision that is the subject of the appeal.~~

(2) Administrative decisions. A final decision of an administrative matter by a land use authority or an appeal authority is valid if the decision is supported by substantial evidence in the record and is not arbitrary, capricious, or illegal. ~~The appeal authority shall determine the correctness of a decision of the land use authority in its interpretation and application of the land use ordinances.~~

(3) A determination of illegality requires a determination that the decision, ordinance, or regulation violates a law, statute, or ordinance in effect at the time the decision was made or the ordinance or regulation adopted. ~~Only those decisions in which a land use authority has applied the requirements of the land use ordinances to a particular application, person, lot or parcel may be appealed to an appeal authority.~~

~~(4) An appeal petition shall not be used to waive, modify or amend any requirement, provision or term of the land use ordinances. (Ord. 2005.13, 2005)~~ (Ord. 2017-02. 2017)

16.30.112 No Automatic Stay on Appeal. The filing of an appeal petition does not act as an automatic stay of the land use authority's decision, ordinance or regulation. (Ord. 2017-02, 2017)

16.30.113 Final Decision. A decision of each appeal authority, as identified herein, shall take effect on the date when the appeal authority, as applicable, issues a written decision, which shall constitute a final decision by the city in the matter. ~~(Ord. 2005-13, 2005)~~ (Ord. 2017-02, 2017)

16.30.114 District Court Review. The procedures, standards of review and other requirements governing district court review of final decision made by an appeal authority, or decisions, ordinances, or regulations made by the city council involving the exercise of legislative discretion, are set forth in section 10-9a-801 of the act and are incorporated herein by this reference. ~~(Ord. 2007-35, 2008)~~ (Ord. 2017-02, 2017)

Section 2. Severability. If any section/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.

Effective Date: This Ordinance shall take effect immediately upon its adoption and posting.

PASSED AND ADOPTED BY THE IVINS CITY COUNCIL, STATE OF UTAH, ON THIS _____ DAY OF _____, 2017 BY THE FOLLOWING VOTE:

	AYE	**NAY**	**ABSTAIN**	**ABSENT**
Dennis Mehr	_____	_____	_____	_____
Cheyne McDonald	_____	_____	_____	_____
Jenny Johnson	_____	_____	_____	_____
Steven Roberts	_____	_____	_____	_____
Ron Densley	_____	_____	_____	_____

_____
Chris Hart, Mayor

ATTEST:

_____
Kari Jimenez, City Recorder