
PUBLIC NOTICE

Notice is Hereby Given that the Tooele City Council and the Tooele City Redevelopment Agency will meet in a Work Meeting, on Wednesday, April 6, 2022, at 5:30 p.m. The Meeting will be Held in the Tooele City Hall Council Chambers, Located at 90 North Main Street, Tooele, Utah.

We encourage you to join the City Council meeting electronically by logging on to the Tooele City Facebook page at <https://www.facebook.com/tooelecity>.

1. **Open City Council Meeting**
2. **Roll Call**
3. **Center for Public Safety Management Fire Study Report**
Presented by Joseph Pozzo, Senior Manager for Fire & EMS
4. **Ordinance 2022-11** An Ordinance of Tooele City Enacting a Temporary Zoning Ordinance Regarding Garage Parking in Multi-Family Residential Developments
Presented by Roger Baker, City Attorney
5. **Closed Meeting**
~Litigation, Property Acquisition, and/or Personnel
6. **Adjourn**

Michelle Y. Pitt, Tooele City Recorder

Pursuant to The Americans With Disabilities Act, Individuals Needing Special Accommodations Should Notify Michelle Y. Pitt, Tooele City Recorder, At 435-843-2111 Or Michellep@Tooelecity.Org, Prior To The Meeting.

TOOELE CITY CORPORATION

ORDINANCE 2022-11

AN ORDINANCE OF TOOELE CITY ENACTING A TEMPORARY ZONING ORDINANCE REGARDING GARAGE PARKING IN MULTI-FAMILY RESIDENTIAL DEVELOPMENTS.

WHEREAS, Utah Constitution, Article XI, Section 5 directly confers upon Utah's charter cities, including Tooele City, "the authority to exercise all powers relating to municipal affairs, and to adopt and enforce within its limits, local police, sanitary and similar regulations not in conflict with the general law"; and,

WHEREAS, Utah Code Section 10-8-84 enables Tooele City to "pass all ordinances and rules, and make all regulations . . . as are necessary and proper to provide for the safety and preserve the health, and promote the prosperity, improve the morals, peace and good order, comfort, and convenience of the city and its inhabitants, and for the protection of property in the city"; and,

WHEREAS, Utah Code Section 10-9a-505 enables Tooele City to "enact an ordinance establishing a temporary zoning regulation," without prior Planning Commission recommendation or public hearings, upon the City Council finding a "compelling, countervailing public interest" in doing so, with "temporary" meaning not to exceed six months; and,

WHEREAS, the Utah Supreme Court case of *Western Land Equities v. Logan City* (1980) identified and established a common law principle called the Pending Ordinance Rule, which provides that a land use or development "application for a permitted use cannot be refused **unless a prohibiting ordinance is pending at the time of application**"; further, "if a city...has initiated proceedings to amend its zoning ordinances, a landowner who subsequently makes application for a permit is not entitled to rely on the original zoning designation" (emphasis added); and,

WHEREAS, like UCA Section 10-9a-504, the Pending Ordinance Rule requires a legislative finding of a compelling, countervailing public interest; and,

WHEREAS, *Western Land Equities* also established Utah's vested development rights rule that, except for the Pending Ordinance Rule, a land use application establishes the date on which development rights vest, as well as the set of land use ordinances applicable to the approved land use; and,

WHEREAS, *Western Land Equities* recognizes the unfairness and the threat to the public interest where the announcement of a future zoning ordinance change would trigger a race to file and vest land use applications prior to the municipality's ability to follow the established lengthy process for amending land use ordinances, thus subverting and undermining the very public policies supporting the need for the zoning ordinance amendment; and,

WHEREAS, Tooele City Code Section 7-4-4, referring to Table 7-4-1, requires two off-street parking spaces for all dwellings, including detached single-family dwellings, attached single-family dwellings (e.g., townhouses, duplexes), condominiums, and apartments; and,

WHEREAS, on August 13, 2021, the Tooele City Zoning Administrator issued an administrative interpretation stating that, in a townhouse development, garages may not count toward off-street parking requirements, noting the occupant penchant to use garage space for storage rather than for vehicles, and that if townhouse driveways were not provided, occupant and visitor parking would be pushed on-street, undermining the legislative policy behind requiring off-street parking; and,

WHEREAS, the Zoning Administrator's administrative interpretation was not appealed pursuant to the administrative appeals procedure identified in the City Code (i.e., first to the Director of Community Development under TCC Section 1-27-4, then to the Administrative Hearing Officer under TCC Section 1-27-5 and Chapter 1-28); and,

WHEREAS, though no formal administrative appeals of the Zoning Administrator's administrative interpretation have been submitted pursuant to City Code procedures, other developers have complained about the administrative interpretation, which interpretation is the basis of the City's practice to not count garage space toward off-street parking requirements for townhouse developments; and,

WHEREAS, the City Administration and the City Council believe that the Zoning Administrator's administrative interpretation is correct, and further believes that the City Code should be amended to provide more predictable and understandable legislative language in support of that interpretation; and,

WHEREAS, were the City to allow townhouse developments to count garage space as off-street parking space, without adequate driveway lengths to provide off-street parking, and were occupants to use garages for storage, which is typical, off-street parking would of necessity be pushed on-street, with no other area for off-street parking; and,

WHEREAS, because townhouses are typically narrow structures on small narrow lots, the number of drive/garage access from the street are proportionately much higher than in single-family subdivisions, and the increased number of drive/garage accesses dramatically decreases the amount of on-street parking available to the public; and,

WHEREAS, streets within townhouse developments are often private streets, for internal traffic circulation, and thus can be narrower than public streets, as narrow as 26 feet under the International Fire Code, and with cars parked on both sides of the street due to insufficient off-street parking, the street becomes impassable to many emergency response vehicles (i.e., ambulances, fire trucks), impassable for two-way vehicle traffic,

and difficult even for one-way vehicle traffic, further exacerbating the public safety risks of predominant on-street parking; and,

WHEREAS, Tooele City has prior experience with precisely this scenario, including with The Fields of Overlake townhomes and West Pointe Meadows townhomes, in which garages are used for storage, no other (or insufficient) off-street parking spaces were provided, and both occupant and visitor parking are pushed onto the street; and,

WHEREAS, TCC Section 10-3-6 provides that “(1) It shall be unlawful to park a vehicle on any public right-of-way: (a) when snow is falling upon that vehicle; or, (b) when snow or ice have accumulated in any amount on the right-of-way upon which that vehicle is parked.” This legislatively-enacted regulation is necessary to allow adequate snow plowing, to reduce the risk of snow plows striking and damaging parked vehicles, to avoid injury to snow plow drivers and damage to snow plows, to remove snow from public streets sufficiently to allow safe vehicle travel, to allow safe emergency vehicle access including police vehicles, ambulances, and large fire apparatus, to preserve the full public street travel way for its intended purpose of traffic circulation, to allow safe garbage removal by large garbage trucks, to minimize stacking of deep snow against vehicles parked on the street in a way that the vehicles cannot move, among other things; and,

WHEREAS, TCC 10-3-6 recognizes the public safety risk of on-street parking in winter by providing, “Any vehicle parked in violation of this Section may be removed at the discretion of the Tooele City Police Department for creating public safety risks and for obstructing the City’s snow removal efforts”; and,

WHEREAS, while on-street parking is not prohibited during non-winter seasons, pushing *all* or nearly all occupant and visitor parking onto the street creates a real safety risk for children and other pedestrians crossing the street from between parked vehicles, reducing and confusing driver visibility of the roadway and of crossing children and other pedestrians, increasing risks for children and others riding bicycles in the roadway as required by State of Utah transportation regulations, among other dangers; and,

WHEREAS, developers have suggested that imposing a recorded covenant prohibiting storage of personal property in townhouse garages, and enforcing the covenant through a homeowner’s association, would mitigate the City’s on-street parking concerns. The City Administration and City Council believe, however, that the covenant would be ignored due in part to the lack of storage space inside small townhouse units, and would be practically and politically impossible to enforce, for the following reasons, among others:

- the covenant contradicts the normal, typical, popular, accepted, and expected resident behavior of using garages for personal property storage;
- enforcement of the covenant would be very unpopular with residents, creating contention and community division among the association board members and their neighbors;
- the covenant would be no more enforceable than a recorded covenant against sneezing, or waving to neighbors, or children playing in the yard; and,

WHEREAS, all of the above considerations and findings serve to support a finding of a compelling, countervailing public interest to require off-street parking other than garage space in townhouse developments and to disallow garage space to count toward off-street parking requirements; and,

WHEREAS, the City Administration avers that, when enacting its off-street parking regulations, the City Council intended for townhouse developments to provide off-street parking in addition to garage space, as with all single-family dwellings, though the Code does not specify minimum driveway lengths for townhouse developments; and,

WHEREAS, the City Administration recommends that the City Code be amended to disallow developers and their design professionals from counting garage space toward off-street parking requirements; and,

WHEREAS, following approval of this Ordinance and the temporary zoning regulation proposed herein, the City Council will have a maximum of six months to discuss and determine its legislative policy regarding counting garage space toward off-street parking requirements in townhouse, condominium, and other attached single-family dwelling developments; and,

NOW, THEREFORE, BE IT ORDAINED BY THE TOOELE CITY COUNCIL as follows:

1. This Ordinance 2022-11 is hereby approved; and,
2. The temporary zoning ordinance enumerated and described in this Ordinance 2022-11 is hereby temporarily enacted; and,
3. This Ordinance 2022-11 and the temporary zoning regulation are effectively immediately, as authorized by the Tooele City Charter; and,
4. For the duration of this temporary zoning regulation, all townhouse, condominium, and other attached single-family and multi-family developments shall provide the minimum required off-street parking spaces without considering garage space; and,
5. This Ordinance 2022-11 shall be in effect until a land use regulation is enacted following the regular Planning Commission, City Council, and public hearing and notice processes required by the Utah Code and the Tooele City Code, but in no event for longer than six months; and,
6. The City Administration, including planning staff, are hereby instructed to prepare draft City Code language on the subject of this Ordinance 2022-11 for consideration by the City Council; and,

7. Should a new land use regulation governing garage parking not be enacted within the six-month period referenced above, the existing City Code provisions will govern; and,
8. This Ordinance 2022-11 and its temporary zoning regulation shall have binding application upon all land use applications submitted after the date on which proceedings began to amend the City Code regarding garage parking, that date being March 18, 2022; and,
9. As required by Utah Code Section 10-9a-504 and *Western Land Equities*, the City Council hereby makes a finding of compelling, countervailing public interest in disallowing garage parking to count toward required off-street parking spaces due to the reasonably foreseeable risks to the public health and safety of occupant and visitor parking being located on the public streets, those risks being more fully described at length in the recitals above, which recitals are hereby incorporated into this finding; and,
10. Similarly, the City Council hereby finds that failing to approve this Ordinance 2022-11 and enact this temporary zoning ordinance, a residential parking crisis would result, as early as the next approved townhouse development in the vicinity of that development, with the crisis compounding with the proliferation of townhouses developments with inadequate off-street parking.
11. Nothing in this Ordinance 2022-11 shall be considered to eliminate or reduce the current visitor parking requirements of the City Code, and nothing shall allow dwelling unit driveways and garage space to be counted as visitor parking space.

This Ordinance is necessary for the immediate preservation of the peace, health, safety, and welfare of Tooele City and its residents and businesses and shall become effective upon passage, without further publication, by authority of the Tooele City Charter.

IN WITNESS WHEREOF, this Ordinance is approved by the Tooele City Council this ____ day of _____, 2022.

TOOELE CITY COUNCIL

(For)

(Against)

ABSTAINING: _____

MAYOR OF TOOELE CITY

(Approved)

(Disapproved)

(If the mayor approves this ordinance, the City Council passes this ordinance with the Mayor's approval. If the Mayor disapproves this ordinance, the City Council passes the ordinance over the Mayor's disapproval by a super-majority vote (at least 4). If the Mayor neither approves nor disapproves of this ordinance by signature, this ordinance becomes effective without the Mayor's approval or disapproval. UCA 10-3-704(11).)

ATTEST:

Michelle Y. Pitt, City Recorder

S E A L

Approved as to Form:

Roger Evans Baker, City Attorney

**Tooele City Planning Commission
Business Meeting Minutes**

Date: Wednesday, March 23, 2022

Time: 7:00 p.m.

Place: Tooele City Hall Council Chambers
90 North Main Street, Tooele Utah

Commission Members Present:

Melanie Hammer
Nathan Thomas
Chris Sloan
Matt Robinson
Tyson Hamilton
Weston Jensen
Paul Smith
Alison Dunn

Commission Members Excused:

Melodi Gochis

City Council Members Present:

Maresa Manzione

City Council Members Excused:

Ed Hansen

City Employees Present:

Andrew Aagard, City Planner
Jim Bolser, Community Development Director
Paul Hansen, Tooele Engineer
Roger Baker, Tooele City Attorney

Minutes prepared by Katherin Yei

Chairman Robinson called the meeting to order at 7:00 p.m.

1. Pledge of Allegiance

The Pledge of Allegiance was led by Chairman Thomas.

2. Roll Call

Melanie Hammer, Present
Nathan Thomas, Present
Chris Sloan, Present
Matt Robinson, Present

6. Discussion on Ordinance 2022-11 An Ordinance of Tooele City Enacting a Temporary Zoning Ordinance Regarding Garage Parking in Multi-Family Residential Developments

Mr. Baker indicated his purpose of introducing the Commission to a temporary zoning ordinance regarding garage parking being counted for minimum required off-street parking in residential areas. There is a legal doctrine called the pending ordinance rule. Once a temporary zoning ordinance is put in place, all developments have to follow the it until it ends at six months or a new rule takes effect. If there is an important enough reason, compelling and countervailing, the City Council can impose a temporary zoning ordinance without the Planning Commission's recommendation and with public hearings. This is to help prevent a rush of applications to vest in the current regulations while new regulations are being formulated and are going through the regular process for enacting new land use ordinances.

The Planning Commission asked the following questions:

What is the difference between the temporary ordinance and a moratorium?

Does the new rule have to mirror the temporary ordinance?

Mr. Baker addressed the Planning Commission. The Council cannot declare a moratorium on their own rules, but they can change their rules. The pending ordinance doctrine allows the rules to change immediately without going through the regular process. It is temporary and for a period of up to 6 months. At 6 months, the ordinance will revert to previous or they need to have adopted something new. The new rule does not have to mirror the temporary ordinance. Any change has to go through the regular process. The current rules require two parking spaces for a single-family dwelling, which is usually accomplished by a driveway long and wide enough for two cars, and require garages with minimum dimensions. The concern is garages are often used for storage, and whether to count the garage apart of the minimum required off-street parking spaces. City Hall has received many complaints regarding on-street parking. Some townhouse developments do not have driveways or other off-street parking, and because of the higher densities more of the street frontage is used for drive approached, reducing the amount of on-street parking, forcing parking to spill over into neighboring developments. On-street parking during snow events is a violation of the City Code because it prevents safe and adequate snow plowing. In the opinion of the City Administration, this rises to the level of a compelling, countervailing public interest. The ordinance being presented is for a maximum six-month period, allowing garage space to not be included in off street parking. Anything proposed as a new permanent regulation will come back for further discussion and recommendations.

The Planning Commission shared their personal experience, expressing the need for the ordinance. They asked the following questions about the current requirements:

Does the City require the driveway to be long enough and wide enough to fit two cars?

What are the requirements for residential areas?

Is six months a realistic timeline to get the new ordinance in place?

Mr. Baker addressed the Planning Commission concerns. The process will include looking at the off-street parking requirements for single family, townhomes, and apartments. The requirement for single-family detached housing is 25 feet, requiring a two-car garage, and a 20-foot depth

between house and street, which required a driveway that accommodates two cars. The City does require setbacks in driveways and garages, requiring two spaces, and requiring off street parking. There are no extensions to the 6-month maximum. City staff must work efficiently to bring something forward before the temporary regulation reverts back to the current rule. The six months started with a public notice published on Friday, March 18th.

The Planning Commission shared their support.

7. City Council Reports

Council Member Manzione presented a brief overview of the City Council's meeting. The City Council wanted to hear a discussion and the opinions of the Commission regarding the annexation change. The Mayor is starting 'Monday with the Mayor', a presentation and discussion for the community. The meetings will be held the first Monday of every month in person or on Facebook live.

8. Review and Approval of Planning Commission Minutes for the Meeting Held on March 9, 2022.

There were no changes to the minutes

Commissioner Hamilton motion to approve the Planning Commission minutes from March 9, 2022. Chairman Robinson seconded the motion. The vote was as follows: Commissioner Hammer, "Aye", Commissioner Thomas, "Aye", Chairman Robinson, "Aye," Commissioner Hamilton, "Aye", Commissioner Sloan, "Aye", Commissioner Jensen, "Aye", and Commissioner Smith, "Aye". The motion passed.

9. Adjourn

Chairman Robinson adjourned the meeting at 8:07 p.m.

The content of the minutes is not intended, nor are they submitted, as a verbatim transcription of the meeting. These minutes are a brief overview of what occurred at the meeting.

Approved this ____ day of April, 2022

Matt Robinson, Tooele City Planning Commission Chair