



**Planning Commission
Staff Report
Ordinance Amendment
Hearing Date: September 23, 2020**

Item 1* The Community and Neighborhood Services Department requests an Ordinance Text Amendment to Chapter 15.06 of the Provo City Code, relating to Condominiums. Citywide Application. Robert Mills (801) 852-6407 rmills@provo.org PLOTA20200228

Applicant: Provo City Community and Neighborhood Services

Staff Coordinator: Robert Mills

***Council Action Required:** Yes

Related Application(s):

ALTERNATIVE ACTIONS

1. **Continue** to a future date to obtain additional information or to further consider information presented. *The next available meeting date is October 14, 2020 at 5:00 p.m.*
2. **Recommend Denial** of the proposed ordinance amendment. *This would be a change from the Staff recommendation; the Planning Commission should state new findings.*

Relevant History: Plat approval for new condominium developments or conversions from apartment buildings to condominiums is required before sale of the condominiums.

Staff Recommendation: Staff recommends the Planning Commission forward a positive recommendation of the proposed amendment to the Municipal Council.

BACKGROUND

Provo City Community and Neighborhood Services requests amendments to Provo City Code Section 15.06 to simplify and speed up the process of subdividing condominium projects by aligning the process with the final subdivision process.

FINDINGS OF FACT

- Utah State Code 10-9a-603 requires plats when real properties (or condominium projects) are subdivided
- Utah State Code 57-8-38 (3) states that “the legislative body of a municipality or county may provide by ordinance for the approval of condominium projects proposed within its limits.”
- Utah State Code 57-8-38 (4) states that “Any ordinance adopted by the legislative body of a municipality or county which outlines the procedures for approval of a condominium project shall provide for:
 - (a) a preliminary approval, which, among other things, will then authorize the developer of the condominium project to proceed with the project; and
 - (b) a final approval which will certify that all of the requirements set forth in the preliminary approval either have been accomplished or have been assured of accomplishment by bond or other appropriate means. No declaration or condominium plat shall be recorded in the office of the county recorder until a final approval has been granted.”

STAFF ANALYSIS

1. Provo City Code Section 14.02.020(2) sets forth the following guidelines for consideration of ordinance text amendments:

Before recommending an amendment to this Title, the Planning Commission shall determine whether such amendment is in the interest of the public, and is consistent with the goals and policies of the Provo City General Plan. The following guidelines shall be used to determine consistency with the General Plan:

- (a) *Public purpose for the amendment in question.*

The purpose is to speed up the process of platting condominium projects and conversions by allowing them to be approved administratively.

- (b) *Confirmation that the public purpose is best served by the amendment in question.*

The public benefits from potentially quicker access to for-sale (and potentially more affordable) properties.

Condominiums are also usually less expensive than other types of for-sale properties due to their efficient use of land and building materials.

- (c) *Compatibility of the proposed amendment with General Plan policies, goals, and objectives.*

Goal 3.4.2.3 states that Provo City shall “Develop strategies to increase owner occupancy or long-term residency in the city’s residential neighborhoods.”

Speeding up the process of condominium projects or conversions can be one of those strategies.

- (d) *Consistency of the proposed amendment with the General Plan’s timing and sequencing provisions on changes of use, insofar as they are articulated.*

The proposed amendment is consistent.

- (e) *Potential of the proposed amendment to hinder or obstruct attainment of the General Plan’s articulated policies.*

This amendment presents no obstructions to attaining General Plan policies.

- (f) *Adverse impacts on adjacent land owners.*

There are no adverse impacts expected.

- (g) *Verification of correctness in the original zoning or General Plan for the area in question.*

The proposed amendment will not affect the zoning of an area because it applies citywide

- (h) *In cases where a conflict arises between the General Plan Map and General Plan Policies, precedence shall be given to the Plan Policies*

There are no anticipated conflicts.

CONCLUSIONS

State code allows municipalities to determine the process for the approval of condominium plats. Since it is the goal of Provo City to encourage owner occupancy and make the development process easier, staff is recommending changing the process of platting condominiums, giving the responsibility solely to the administration and its designee (the Development Services Department) instead of the Planning Commission. This will eliminate steps in the process, speeding it up.

STAFF RECOMMENDATION

Based on the foregoing facts and analysis, staff recommends forwarding a positive recommendation of the proposed ordinance text amendment to the Municipal Council.

ATTACHMENTS:

1. Ordinance text amendment language

Chapter 15.06 CONDOMINIUMS

Sections:

- 15.06.010 Definitions.
- 15.06.020 Approval Required.
- 15.06.030 Submission of Application.
- 15.06.040 Review by ~~Planning Commission~~ The Development Services Department.
- ~~15.06.050 Condominium Approval by Planning Commission.~~
- ~~15.06.060 Condominium Approval by Mayor.~~
- 15.06.0570 Certification by Mayor.
- 15.06.0680 Improvement Performance Bonds.
- 15.06.0790 Amended Submissions.
- 15.06.1080 Appeal of The Development Services Department's ~~Planning Commission's~~ or Mayor's Action.
- 15.06.11090 Submission Required - Condominium Conversion.
- 15.06.1020 Information Required.
- 15.06.1130 Report of Building Official.
- 15.06.1240 Minimum Standards Required.
- 15.06.1350 Parking Requirements.
- 15.06.1460 Utility Requirements.
- 15.06.1570 Mechanical and Heating Requirements.
- 15.06.1680 Notice Required.
- 15.06.1790 Content of Notice.
- 15.06.20180 Submission of Notice Verification.
- 15.06.2190 Unlawful to Sell or Lease.

15.06.010

Definitions.

"Condominium" or "Condominium Project" means a plan or project whereby two (2) or more units, whether contained in existing or proposed apartments, commercial or industrial buildings or

structures, or otherwise are separately offered or proposed to be offered for sale. Condominium Project shall also mean the property when the context so requires.

“Condominium Unit” means a unit together with the undivided interest in the common areas and facilities appertaining to that unit. Any reference to a condominium unit includes both the physical unit together with its appurtenant individual interest, unless the reference is specifically limited to a time-period unit.

“Condominium Ownership Act” or **“Act”** means the provisions of Chapter 8 of Title 57, Utah Code, as amended.

“Conversion” means a proposed change in the type of ownership of a parcel or parcels of land and/or existing structures from single ownership such as an apartment house or multi-family dwelling into a “condominium project” as herein defined with arrangements involving separate ownership of individual condominium units and joint collective ownership of common areas or facilities.

“Declaration” means a recorded declaration containing covenants, conditions, and restrictions relating to the condominium project which shall be prepared in conformance with the Condominium Ownership Act.

“Mayor” means the duly elected or appointed, qualified and acting, Mayor of Provo City.

“Record of survey map” means a plat or plats of survey of land and units prepared in accordance with the requirements in the Condominium Ownership Act.

“Unit” means a separate physical part of a condominium project or property intended for any type of independent use, including one (1) or more rooms or spaces located in one (1) or more floors (or part or parts of floors) in a building, or a time-period unit as the context may require. A convertible space shall be treated as a unit in accordance with the Condominium Ownership Act.

15.06.020

Preliminary Approval Required.

Prior to the construction or conversion of any building to be used as a condominium, the record of survey map, the bylaws, and the declaration therefor shall be submitted to and be approved by the Provo City [Development Services Director or Designee](#) in conformance with the procedures, requirements, and standards contained herein, as required under the Utah Condominium Ownership Act.

(Rep&ReEn 1999-34)

15.06.030

Submission of Application.

(1) The owner or developer of a proposed condominium project desiring approval shall file an application with the [Development Services Department](#) ~~Planning Commission~~ on a form prescribed by the City. Said application shall be accompanied by:

(a) A PDF copy of a record of survey map accurately drawn to scale in conformance with the provisions of Section [57-8-13](#), Utah Code, as amended, which shall be prepared by an engineer or land surveyor registered in the State of Utah. The scale of said record of survey map shall be no smaller than one (1) inch equals forty (40) feet.

(b) A PDF of a project plan prepared to the same scale as the record of survey map designating the location of buildings; present and needed utilities and irrigation ditches; the intended use of common areas; the locations of utility lines and easements; and the location and extent of storage, recreational facilities, parking, driveways, pedestrian ways, curbs, walls, fences, landscaping, and sprinkling systems.

(c) A PDF of the proposed condominium declarations and bylaws.

(d) Where conversion of an existing building is proposed as part of the condominium project, a property report containing the information specified in Section [15.06.120](#), Provo City Code shall be submitted as part of the application, together with a plan for all proposed improvements and repairs.

(e) Proof of Notice to Tenants required by Section 15.06.180, Provo City Code to be submitted prior to final condominium approval.

(2) *Filing fees.* To assist the City in defraying the cost involved in publication and review of a condominium project, fees shall be submitted with an application in the amounts as established by Consolidated Fee Schedule adopted by the Municipal Council.

~~(3) Incomplete applications may be accepted by the City and reviewed for advisory comments by the Planning Commission, but shall not be deemed filed, accepted, or reviewed until complete.~~

(Rep&ReEn 1999-34, Am 2006-15, Am 2016-08)

15.06.040

Review by The Development Services Department ~~Planning Commission.~~

(1) Upon receipt of an application for approval of a condominium project, the ~~Development Services Department~~ ~~Planning Commission~~ shall review the application and related documents to determine whether the project conforms to applicable requirements of the Utah Condominium Ownership Act, applicable building and zoning portions of the Provo City Code and other City ordinances of the district in which the condominium project is located, standards applied to the condominium by provisions of this Title, and any requirements or provisions set forth in the Report of Property Condition submitted by the owner/developer and the Building Inspection Division.

(2) If the ~~Development Services Department~~ ~~Planning Commission~~ finds that there are violations of applicable zoning, building, or similar codes or requirements, it may hold the application for the condominium project until such violations have been corrected; or may recommend condominium approval subject to conditions that the violations be corrected or bonded for prior to certification and recording.

(Rep&ReEn 1999-34)

15.06.050

~~Condominium Approval by Planning Commission.~~

~~(1) Upon submission of the reports and recommendations of the Planning Commission, the matter shall be presented for consideration to the Planning Commission for condominium approval at a date not to exceed thirty (30) days from the date of application. If said Commission finds that the project as proposed is in compliance, or that plans have been submitted which will bring the structures into compliance with applicable codes and policies, and that there will be no substantial hazard or detriment to the health, safety, or welfare of the community, the neighborhood, or prospective owners of the condominium units, then the Planning Commission shall recommend to the Mayor condominium approval with any conditions which they deem appropriate. Such conditions may include correction of violations of building, zoning, health, fire, or similar codes, appropriate amendments to declarations, bylaws, or amendments to the Record of Survey Map and the project plan which may enhance or protect the environment of the condominium development and the neighborhood in which it is located.~~

~~(2) If the Planning Commission finds circumstances or conditions which would constitute a hazard to the health, safety, or welfare of the community, the neighborhood, or prospective owners of the condominium project, it may recommend denial of the project to the Mayor.~~

~~(3) Failure of the Planning Commission to make a recommendation to the Mayor within thirty (30) days of the initial application date, shall be deemed to constitute a recommendation of approval.~~

(Rep&ReEn 1999-34)

15.06.060

~~Condominium Approval by Mayor.~~

~~(1) Upon receipt of recommendation from the Planning Commission, the Mayor of Provo City shall, within thirty (30) days, consider approval of the condominium project.~~

~~(2) If the Mayor finds that the project is in compliance with, or has presented plans which will bring the structure under compliance with applicable zoning, building, and other appropriate portions of the Provo City Code and other City ordinances and policies; and that the project will not create substantial detriment to residents of the City, the neighborhood, or prospective condominium~~

~~owners, the Mayor shall grant condominium approval with any conditions deemed appropriate to ensure an attractive and safe environment.~~

~~(3) If the Mayor finds circumstances or conditions which would constitute a hazard to the health, safety, or welfare of the community, the neighborhood, or prospective owners of the condominium project, the Mayor may deny condominium approval with an appropriate finding of fact.~~

~~(4) The effect of condominium approval by the Mayor shall entitle the owner or developer to proceed with obtaining building permits, giving notice to tenants, preparing documents for recording, and otherwise proceeding with the project with all aspects being in conformance with the conditions of approval and subject to certification and recording. The sale of condominium units, the recording of records of survey, and the recording of declarations, however, shall not be accomplished prior to certification.~~

~~(5) Condominium approval shall expire and become null and void two (2) years from the date of approval unless a submission for certification has been made in conformance with the provisions set forth herein.~~

(Rep&ReEn 1999-34)

15.06.0570

Certification by Mayor.

(1) Within two (2) years of condominium approval, a certification submission shall be made to the [Development Services Department](#) ~~Planning Commission~~. Upon assurance by the [Development Services Department](#) ~~Planning Commission~~ that all conditions of condominium approval have been completed, records of survey and declarations are complete, and all final documentation is signed and submitted including any bonds or agreements required to be filed, then the condominium development, together with all documentation shall be submitted, with a report of recommendation to the Mayor for certification and recording.

(2) If the Mayor shall determine said project is not in conformance with the Provo City Code, other City ordinances or policies, or documents submitted are not in substantial compliance with condominium approval, or if conditions of approval have not been satisfactorily completed, the Mayor shall not certify the record of survey and shall specify reasons for denial of certification.

(3) If, upon receiving the certification report, the Mayor concurs in the findings of the [Development Services Department](#) ~~Planning Commission~~ and finds that said project is in conformance with applicable portions of the Provo City Code, other City ordinances and policies, the Mayor shall certify the record of survey, affix ~~his~~-their signature, and release the record of survey map and the covenants of said condominium project for recording.

(4) No record of survey map shall have any force or effect until the same has received certification by the Mayor, appropriate signatures have been affixed, and the survey plat has been duly recorded in the office of the County Recorder of Utah County.

(Rep&ReEn 1999-34)

15.06.0680

Improvement Performance Bonds.

Performance bonds or other assurances of performance for the installation of required improvements in a condominium project may be posted in accordance with City bonding standards if weather conditions, acts of God, or other circumstances beyond the control of the developer make it infeasible or impractical to complete the improvements prior to certification or recording. Posting of bonds or other assurances may not be used to guarantee completion of required fire separation or correction of code violations which are deemed to be hazardous to the life or safety of occupants.

(Rep&ReEn 1999-34)

15.06.0790

Amended Submissions.

If the Mayor has disapproved any project, within thirty (30) days thereafter the developer may file with the [Development Services Department](#) ~~Planning Commission~~ appropriate materials altered to correct all deficiencies specified in the action of said Mayor. Upon said filing, the matter shall be reconsidered without an additional fee.

(Rep&ReEn 1999-34)

15.06.1080

Appeal of ~~Planning Commission's or Mayor's~~ Action.

Any person aggrieved by or affected by any decision ~~of the Planning Commission or the Mayor~~ related to a condominium project may appeal said decision by filing a written notice of appeal with the Provo City Board of Adjustment within ten (10) days of said decision. Said notice of appeal shall specify the grounds of the appeal and circumstances related thereto.

(Rep&ReEn 1999-34)

15.06.11090

Submission Required - Condominium Conversion.

As an element of any application for a condominium which includes the conversion of existing structures, the owner or developer shall submit a Report of Property Condition which is intended to ensure that the standards of the declaration appropriately address existing and future conditions related to maintenance, upkeep, and operation as referenced by Section 57-8-13, Utah Code, as amended.

(Rep&ReEn 1999-34)

15.06.1020

Information Required.

(1) The report of property condition shall be submitted ~~on a form provided by Provo City~~ and shall contain the following information:

- (a) The age of the building or buildings, with copies of original building plans and a disclosure of whether or not the actual building conforms to the plans.
- (b) Condition of structural elements including roof, foundations, walls, mechanical systems, electrical system, plumbing system, and boiler and furnace. A plan showing which parts of the system are maintained in common and which are maintained by individual units.
- (c) Size of water service line(s) from meter to main and from main to buildings.

- (d) Size and location of sewer lateral.
- (e) Capacity of electrical service for each unit (amps).
- (f) Condition of paving materials on private streets (if any).
- (g) *Condition of paving or surfacing material on driveways, parking areas, sidewalks, curbs, etc.*
Detailed plan of parking and traffic circulation.
- (h) Condition of paint and/or exterior surfaces of all buildings and structures.
- (i) All known conditions constituting deficiencies.
- (j) All known conditions which may require repair or replacement within the next succeeding five (5) year period.

(2) The above report may be referred back to the developer by the City for additional detail as is necessary to adequately evaluate the physical condition of the building, equipment, and premises.

(Rep&ReEn 1999-34)

15.06.1130

Report of Building Official.

- (1) At the time of submission of an application for a condominium which involves the conversion of any existing buildings, the Building Inspection Division shall make an inspection of the proposed condominium project to determine compliance with the life-safety provisions of the International Building Code.
- (2) Prior to ~~Planning Commission~~ consideration of a condominium project involving conversion of existing buildings, the Building Inspection Division shall submit a report to ~~the Development Services Director or Designee~~ ~~said Commission~~ specifying any deficiencies of life-safety standards of the International Building Code which are found to exist in the project. This report of the Building Inspection Division shall be submitted ~~to the Planning Commission~~ as an element of the "Report of Property Condition."

(Rep&ReEn 1999-34, Am 2006-50, Am 2011-08)

15.06.1240

Minimum Standards Required.

To achieve the purposes and objectives of this Title, all proposals for a condominium development or conversion shall be made pursuant to the provisions of this Chapter. The standards and criteria contained herein are intended to provide assurances that the geographical layout of the project is accomplished in a manner which is attractive and is not detrimental to the functioning of the project or surrounding areas; and that the contents of the declaration assure proper operation, construction, maintenance, and upkeep of all utilities, facilities, recreation areas, and roads and parking areas within the development as referenced by Section 57-8-35, Utah Code, as amended.

(Rep&ReEn 1999-34)

15.06.1350

Parking Requirements.

- (1) Each unit in a condominium development, irrespective of size, shall conform to the parking provisions contained in Chapter 14.37, Provo City Code.
- (2) In addition to any other parking requirements, at least one (1) space per five (5) dwelling units for recreational vehicles and boat storage shall be provided. These spaces may be owned in common or by the homeowners' association. If conditions within a condominium conversion preclude compliance with this requirement, a provision shall be placed in the bylaws or declaration precluding the parking of recreational vehicles and boats within the condominium development, and such preclusion shall be strictly enforced by the management.

(Rep&ReEn 1999-34)

15.06.1460

Utility Requirements.

- (1) Each condominium unit within a development shall be separately metered for gas, electricity, and water, unless the declarations provide for the homeowners' association to pay the cost of services and prorate those costs to unit owners on an equitable basis. Such declaration shall disclose

to the unit owners that nonpayment of utility bills by the association may result in loss of utility service.

(2) Each unit shall be provided with readily accessible individual shutoff valves, safety devices, or switches for water, gas, and electrical services.

(Rep&ReEn 1999-34)

15.06.1570

Mechanical and Heating Requirements.

(1) Each condominium unit shall be equipped with its own heating system, except where a central water or steam system is present.

(2) Each condominium unit shall be provided with its own means of controlling temperature in that unit when the building utilizes a central heating plant. All mechanical work and repairs shall be completed under a permit and shall comply with all applicable building, health, and fire codes.

(Rep&ReEn 1999-34)

15.06.1680

Notice Required.

(1) As part of the application for approval of a condominium project when said project involves the conversion of an existing structure where the structure has been occupied by tenants prior to application for a conversion, the developer or owner shall provide notice of intended conversion to said tenants by certified mail. Said notice shall be provided at least ninety (90) days prior to required vacation of the premises and at least one hundred twenty (120) days before any construction associated with the conversion begins.

(2) This notice requirement shall not apply to structures that have remained totally vacant for a period of at least one (1) month prior to filing of an application for a conversion; nor shall it preclude the certification of a project prior to the expiration date in an instance where every tenant has executed a waiver relinquishing the tenant's right of notice under this provision.

(Rep&ReEn 1999-34, Am 2006-50)

15.06.1790

Content of Notice.

- (1) The tenant notice required by this Chapter shall include:
 - (a) The specified intent of the owner to accomplish a conversion of the building to a condominium project and an indication of need to have the units therein vacated.
 - (b) The estimated dates of termination of occupancy by tenants which shall not be less than ninety (90) days from the date of notice; and an indication of the approximate dates of construction which shall not be less than one hundred twenty (120) days from the date of notice.

(Rep&ReEn 1999-34)

15.06.20180

Submission of Notice Verification.

- (1) Prior to or in conjunction with submission of documentation for certification and recording, the owner or developer shall submit to the [Development Services Department](#) ~~Planning Commission~~ a copy of said notice together with a list identifying names and apartments or unit numbers, for all tenants within the condominium conversion project. The notice copy and list shall also be accompanied by an affidavit certifying that all tenants within the condominium project have been personally delivered a copy of the notice or mailed said notices by registered, certified mail, and that the same were in fact delivered.
- (2) The Mayor shall not grant certification of a condominium conversion project until said copy of notice, list, and affidavit have been received by the [Development Services Department](#) ~~Planning Commission~~ and filed with the City Recorder.

(Rep&ReEn 1999-34)

15.06.2190

Unlawful to Sell or Lease.

It is unlawful for any person, firm, corporation, partnership, or association to sell, contract to sell, or to lease any unit of any condominium or any other portion thereof until final record of survey plats, in full compliance with the provision of this Title, have been certified and signed by the Mayor and duly recorded in the office of the Utah County Recorder.

(Rep&ReEn 1999-34)