Moab City Council Agenda Item
Meeting Date: January 12, 2021

Title: Discussion of changes to the Land Use provisions of the Moab Municipal Code (MMC) relating to All-Terrain Vehicles

Disposition: Discussion and direction.

Staff Presenter: Nora Shepard. Planning Director

Attachment(s):
- Exhibit 1: Resolution 41-2020
- Exhibit 2: Utah State Code 10-9-504 (Temporary Land Use Ordinances)
- Exhibit 3: MMC 17.12 relating to Non-Conforming Uses

Background/Summary:
On October 20, 2020, the City and County adopted Resolution 41-2020 (attached as Exhibit 1) that directs staff, among other things, to initiate changes to the MMC “TO AMEND THOSE RELEVANT PORTIONS PERMITTING VEHICLE SALES, RENTALS, OR LEASING, COMMERCIAL OUTDOOR RECREATIONAL USES, AND OUTFITTER, GUIDE SERVICES AND FACILITIES.”

The resolution goes on the specify the following:
Formally initiate proceedings to amend the Grand County Land Use Code and the Moab Municipal Code to amend those relevant portions permitting All-Terrain Vehicle sales, rentals, or leasing and outfitter, guide services and facilities, including LUC Sections 3.1, 3.4.9H, and 3.4.9K and City Code Sections 17.21.20, 17.24.20, 17.27.20, 17.31.20, and 17.32.20;

The Planning and Administrative staff have been discussion ways to address this directive. At this time, the staff is asking the City Council to provide direction on moving forward with the Land Use Changes.

At the same time the City is looking at Land Use Regulation changes, discussions are on-going among City and County leaders on proposed legislation to be considered during the upcoming session. There have also been discussions of public engagement and engagement with the ATV community and businesses. This memo does not address those discussions, but the outreach plan can certainly inform the Land Use changes.

Options for Moving forward:
1. Adopt a Temporary Land Use Ordinance as allowed by Utah State Law to give the City time to develop the Land Use changes and allows time for public engagement. Resolution 41-2020 does not address a Temporary Zoning Ordinance, but it is a tool that can be used to "buy time" for ordinance development in cases. A temporary land use regulation may be adopted when
there is an emergency situation or a compelling reason that requires immediate action. While the temporary regulation is in place, the local government has time to address the situation through the normal process to adopt zoning ordinances. The City has imposed such a regulation in the past.

This link to the Utah State Property Ombudsman Website provide a good summary and information on Temporary Land Use Ordinances can be found here:

https://propertyrights.utah.gov/temporary-zoning-ordinance-i-e-moratorium/

The applicable Utah State Code Section is attached as Exhibit 2.

Because the Resolution also prohibits the City from issuing new business licenses for ATVs, it is not likely that a new business could be approved for a business license. However, there is nothing in place currently to prevent a property owner or applicant to file a Site Plan Application for a new ATV business. They could go through the Land Use Approval process, but no business license can be issued.

2. **Proceed to initiate changes without a Temporary Land Use Ordinance.** The City can certainly just move forward, according to the process required for zoning and text changes as specified in section 17.04 of the MMC Land Use Code. This approach would not prevent an applicant from filing for a Site Plan application for a new ATV rental or sale use.

**Code Changes**

Whether or not the City adopts a Temporary Land Use Ordinance, the actual changes to the Code include:

1. **Adding and amending the definitions section to be consistent with Utah State Definitions and for internal consistency.** We do not currently have specific definitions for ATV rental and Outfitter or Guide Services. Those definitions need to be modified. There are also a number of “permitted uses” in the zone descriptions related to ATV rentals. The definitions should be cleaned up to have the permitted uses included as definitions.

2. **Amending each zoning district to eliminate ATV rentals and ATV Outfitters and Guide Services as a permitted use.** Once the definitions and permitted uses are cleaned up, the City can remove ATV rentals and ATV Outfitters and Guides as a permitted use in all zones. This would mean that all existing ATV rentals would be considered as “Non-Conforming Uses” and subject to MMC Chapter 17.12 General Provisions (Exhibit 3). Non-Conforming Uses are considered to be existing legal uses that were permitted at the time the use was approved.
Only minor modifications can be made or replaced but allowed changes to the business are severely limited. Businesses would not be able to increase building square footages or do significant remodel. This may hamstring existing businesses from making needed improvements. It is also questionable whether new vehicles could be added to an existing fleet.

3. **Consider modifying the specific use regulations for ATV rentals and ATV Outfitters and guides in applicable zones.** Many of the uses described as permitted uses in each zone are qualified by special conditions or regulations that apply to the use. For example, we have specific regulations for Day Care uses, Public Buildings and Houses of Worship. The use could be permitted, but only if certain conditions or requirements can be met. It is possible that we allow ATV rental is some zones with specific conditions, such as a requirement to trailer to the trailheads, or assurances that the ATVs being rented meet noise requirements. This approach could also be discussed in the future, after we finish the first round of amendments and based on stakeholder and public engagement.

**Miscellaneous Questions and Clarifications**
As the City has been implementing the directives of Resolution 41-2020, several questions have arisen. These questions are not specific to the land use changes. However, staff is requesting direction from Council. The questions are:

1. The moratorium on new business licenses passed by the Council applies to Type I, II, and III ATVs as they are defined by state law. Under the definitions in state law, a Type III ATV is a modified Jeep. (Un-modified Jeeps are not Type III ATVs and so are not affected by the moratorium.) Was the intent of the Council to impose the moratorium on modified Jeeps? If the answer is yes, then no further action is necessary. If the answer is no, staff requests direction as to whether the Council wants to modify the moratorium.

2. The moratorium in Resolution 41-2020 applies to the issuance of "new" business licenses for the sale, rental, or leasing of ATVs and ATV outfitting, guiding, and touring. The current moratorium does not prohibit an existing business licensee from expanding their fleet. Our current business license application does not require the business owner disclose the number of vehicles in their fleet. Was the intent of the Council to prohibit the expansion of an existing business licensee’s fleet? If the answer is no, no further action is necessary. If the answer is yes, staff requests direction as to whether the Council wants to modify the moratorium. Regardless, staff recommends that the City modify the business licensing process to require a fleet inventory upon license renewal (and application when the moratorium is lifted).

**Direction**
The staff is looking for discussion and direction on the following:
1. Should we move forward with or without a Temporary Zoning Ordinance (180-day moratorium) on new land use applications while we pursue Code amendments?

2. Should we move forward with prohibiting new ATV rentals in all zones making all existing uses Non-Conforming Uses?

3. Answers to the Miscellaneous Questions.