

CITY OF MOAB ORDINANCE NO. 2021-02

AN ORDINANCE ENACTING A TEMPORARY LAND USE REGULATION PROHIBITING, FOR A PERIOD OF 180 DAYS, THE NEW DEVELOPMENT OR EXPANSION OF VEHICLE SALES, RENTALS OR LEASING, COMMERCIAL OUTDOOR RECREATIONAL USES, COMMERCIAL AND RECREATIONAL TOUR COMPANIES, OUTFITTERS AND GUIDE SERVICES AS THEY PERTAIN TO ALL TERRAIN VEHICLES, AS DEFINED BY AND DEFINED UNDER UTAH CODE §§ 41-6a-102 AND 41-22-2

WHEREAS, pursuant to Utah Code Annotated (“U.C.A.”) §10-9a-504, a municipal legislative body may, without prior consideration of or recommendation from the planning commission, enact an ordinance establishing a temporary land use regulation for any part or all of the area within the municipality if:

- (i) the legislative body makes a finding of compelling, countervailing public interest; or
- (ii) the area is unregulated.

(b) A temporary land use regulation under Subsection (1)(a) may prohibit or regulate the erection, construction, reconstruction, or alteration of any building or structure or any subdivision approval.

(c) A temporary land use regulation under Subsection (1)(a) may not impose an impact fee or other financial requirement on building or development.

(2) The municipal legislative body shall establish a period of limited effect for the ordinance not to exceed six months;

WHEREAS, Utah Code § 41-6a-1509 permits the operation of street-legal all-terrain vehicles on County roads and City streets (subject to certain requirements);

WHEREAS, Chapter 9a of Title 10 of the Utah Code authorizes the City of Moab to enact ordinances, resolutions, and rules and to enter into other forms of land use controls and development agreements that the City consider necessary or appropriate for the use and development of land within the City of Moab, including ordinances, resolutions, rules, restrictive covenants, easements, and development agreements governing: uses; density; open spaces; structures; buildings; energy-efficiency; light and air; air quality; transportation and public or alternative transportation; infrastructure; street and building orientation and width requirements; public facilities; fundamental fairness in land use regulation; and considerations of surrounding land uses to balance the foregoing purposes with a landowner's private property interests and associated statutory and constitutional protections;

WHEREAS, Chapter 9a of Title 10 of the Utah Code requires the City of Moab to provide for the health, safety, and welfare of its residents; improve the peace and good order, comfort, convenience, and aesthetics of the City; protect the tax base; foster the state’s agricultural and other industries; promote the orderly development of urban and nonurban development; provide fundamental fairness in land use regulation; and facilitate orderly growth and allow growth in a variety of housing types;

WHEREAS, the Moab City Council (“City Council”) adopted the City of Moab General Plan Update on July 11, 2017 with Resolution No. 28 (2017) and adopted the General Ordinances of Moab, Utah in 1958, as amended (“City Code”);

WHEREAS, from time to time, the City adopts ordinances to modify the LUC and City Code to further the purposes of the respective Land Use, Development, and Management Acts and align the same with changing community conditions and state law;

WHEREAS, while the City General Plans acknowledge the important contribution of tourism to the local economy, it also states that business development shall be ecologically responsible, fit the community and the needs and preferences of the residents, and be designed to avoid damaging natural amenities and resources. The General Plan also prioritizes a balance between economic sectors and recreational users to enhance the local recreational, scenic, and cultural amenities to attract and accommodate visitors;

WHEREAS, the City Code currently permits “vehicle sales and rentals,” “outdoor recreational uses, commercial,” and “recreational tour companies, outfitters and guide services” in Sections 17.21.20(A)(18), 17.24.20(A)(26), 17.27.20(A)(38), 17.31.20(A)(13) and (14), and 17.32.20(A)(4)(h);

WHEREAS, as provided in Utah Code §§ 10-1-203, the City adopted ordinances which provide for the licensing of businesses within their jurisdictions for the purpose of regulation and includes the power to deny, revoke, or suspend such licenses, as codified in Chapter 5 of the City Municipal Code;

WHEREAS, the rapid growth of ATV rentals and tours in the City has resulted in a sharp increase in noise impacts to the residents of the City during all hours of the day and night;

WHEREAS, numerous studies have found: noise pollution increases anxiety, depression, high blood pressure, heart disease, and stroke; small increases in unwanted ambient sound have significant health effects; and noise aggravates health conditions by inducing higher levels of stress;¹

¹ Floud, *Medication use in relation to noise from aircraft and road traffic in six European countries: results of the HYENA study*, <https://pubmed.ncbi.nlm.nih.gov/21084328/>; Schmidt, *Effect of nighttime aircraft noise exposure on endothelial function and stress hormone release in healthy adults* <https://academic.oup.com/eurheartj/article/34/45/3508/435199>; Hahad, *Annoyance to Different Noise Sources is Associated With Atrial Fibrillation*, [https://www.internationaljournalofcardiology.com/article/S0167-5273\(17\)37174-7/fulltext](https://www.internationaljournalofcardiology.com/article/S0167-5273(17)37174-7/fulltext);

WHEREAS, at least one additional study has found that people living in areas with more road traffic noise were 25 percent more likely than those living in quieter neighborhoods to have symptoms of depression;²

WHEREAS, studies have shown that continuous noise in excess of 30 dB disturbs sleep, which is well documented to be a prerequisite for good physiologic and mental functioning in healthy individuals,³ and the U.S. Environmental Protection Agency sound guidance for the protection of human health and welfare in rural areas is 55 dB;⁴

WHEREAS, during operation on streets and roads, most All-Terrain Vehicles in the state of Utah (not built to California noise standards) produce decibel levels louder than 70 dBA and often between 85 and 100 dBA;⁵

WHEREAS, the Moab valley is narrow and surrounded by sandstone cliffs which cause noise generated by ATV rentals and tours to reverberate valley-wide, which increases the impact of ATV rentals and tours on residents and visitors;

WHEREAS, several popular ATV trails are accessed through residential neighborhoods in the City, which increases the impact of ATV rentals and tours on residents and visitors;

WHEREAS, market conditions and the boom in ATV rentals and tours have impacted other recreational user groups and associated economic activity, including mountain biking, hiking, rafting, and climbing, which economic sectors thrive in natural quiet;

WHEREAS, in the Fall of 2020, the City received a historic number of public comments objecting to noise impacts from ATV rentals and tours (and related special events), which public comments are included in the record for the joint meeting of the City and County on October 20, 2020;

WHEREAS, under Utah law, the City may exercise powers and perform functions that are reasonably related to the safety, health, morals, and welfare of its inhabitants; and

WHEREAS, for the reasons articulated above and under the authority set forth herein, the Moab City Council finds that compelling, countervailing public interests justify the temporary prohibition of new or expanded sale, rental, or leasing of All-Terrain Vehicles and ATV outfitting, guiding, and touring,

² Orban, *Residential Road Traffic Noise and High Depressive Symptoms after Five Years of Follow-up: Results from the Heinz Nixdorf Recall Study*, <https://ehp.niehs.nih.gov/doi/10.1289/ehp.1409400>

³ Jariwala, *Noise Pollution and Human Health: A Review*, https://www.researchgate.net/publication/319329633_Noise_Pollution_Human_Health_A_Review

⁴ Harrison, *Rock Creek Enduro Sound Tests*, Eldorado National Forest, USDA Forest Service Special Report, May 1994.

NOW, THEREFORE BE IT RESOLVED that the Moab City Council does hereby enact a temporary prohibition of new or expanded uses for the sale, rental, or leasing of All-Terrain Vehicles and ATV outfitting, guiding, and touring as follows:

Section 1: Definitions:

A. “All-Terrain Vehicles (ATVs or ATV)” shall mean all-terrain Type I, II, and III vehicles as defined under Utah Code §§ 41-6a-102 and 41-22-2;

B. “Outfitting, Guiding, and Touring” shall mean accompanying customers and guests in an ATV, and/or outfitting a customer or guest with an ATV, whether driving the vehicle or not, whether or not monetary compensation is exchanged; and

C. “Sale, Rental, and Leasing” shall include the business use of All-Terrain Vehicles for customers, guests, or vendors or any other commercial activity involving an All-Terrain Vehicles whether or not monetary compensation is exchanged.

Section 2: Temporary Regulation and Duration.

The City hereby enacts a temporary land use regulation prohibiting, for a period of 180 days, the development of new and expanded vehicle sales, rentals and leasing, outdoor recreational uses, commercial and recreational tour companies, outfitters and guide services as they pertain to All Terrain Vehicles, as defined under Utah Code §§ 41-6a-102 and 41-22-2.

Section 3: Direction to Staff.

Staff is directed to engage in further study and development of policy recommendations to the City Council to implement ordinance changes consistent with this ordinance.

Section 4: Enforcement.

The City may enforce this ordinance in a civil action to obtain injunctive or declaratory relief. In any such proceeding, the City need only prove the existence of a violation of the ordinance to obtain the injunction. Injunctive relief shall be granted without a requirement of the posting of a bond or other security.

Section 4: Severability.

If any provision of this ordinance shall be found to be invalid by any court with jurisdiction, the provision shall be severed and the remainder of the ordinance shall be enforced without the severed provision.

