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Utah Land Use and Zoning From Start to Finish

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PO Box 3067
Eau Claire, WI 54702

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Presenters

Eduardo V Martinez is in self-practice with a primary focus in contractual and business law, which he also teaches. He retired as a captain from the U.S. Navy and continues to consult on matters of homeland security. Mr. Martinez has written articles involving transportation security including maritime cyberterrorism. He is a former special assistant attorney general. He is admitted to practice in all Mississippi state and federal courts, the Fifth Circuit Court of Appeals, the U.S. Court of Military Appeals, the U.S. Court of International Trade and the U.S. Supreme Court. Mr. Martinez earned his B.A degree from the University of Texas, his M.A. degree from Antioch University, his masters in strategic studies from the U.S. Army War College, and his J.D. degree from the Mississippi College School of Law.

Scott R Sabey is an attorney with Fabian VanCott. Mr. Sabey has more than 20 years of experience in a practice centered on real estate development and related litigation. He works with clients in development of shopping malls, resort condominiums, water companies, and hospitals, as well as financing for large scale residential developments. In addition to assisting clients with transactions, Mr. Sabey is also a litigator with experience in many areas of real estate law. He is a registered lobbyist and works on behalf of a number of local and national companies and associations. Mr. Sabey has served the legal profession as commissioner for the Utah State Bar, chair of the Real Property and Business law sections of the bar, and on the Utah Judicial Counsel. He is chairman of the Sandy City Planning Commission and has served on the city's Board of Adjustments. Mr. Sabey is licensed to practice in Utah's state and federal courts and the U.S. Supreme Court. He earned his B.A. degree from Brigham Young University and his J.D. degree, with honors, from Golden State University in San Francisco.

Gretta C Spendlove is a shareholder in the Salt Lake City law firm of Dentons Durham Jones Pinegar P.C. Ms. Spendlove's experience includes representation of buyers and sellers in purchasing and selling businesses, as well as in purchasing, leasing, and developing real estate; creating legal entities, such as joint ventures, corporations, and limited liability companies; and handling intellectual property issues, such as trademarks and copyrights. She is a member of the Utah State Bar. Ms. Spendlove earned her B.A. degree from the University of Utah and her J.D. degree from the University of Arizona.

Authors

Eduardo V Martinez
Eduardo Martinez, Attorney at Law
Madison, MS

Scott R Sabey
Fabian VanCott
Salt Lake City, UT

Gretta C Spendlove
Dentons Durham Jones Pinegar P.C.
Salt Lake City, UT

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Submitted by Gretta C. Spendlove


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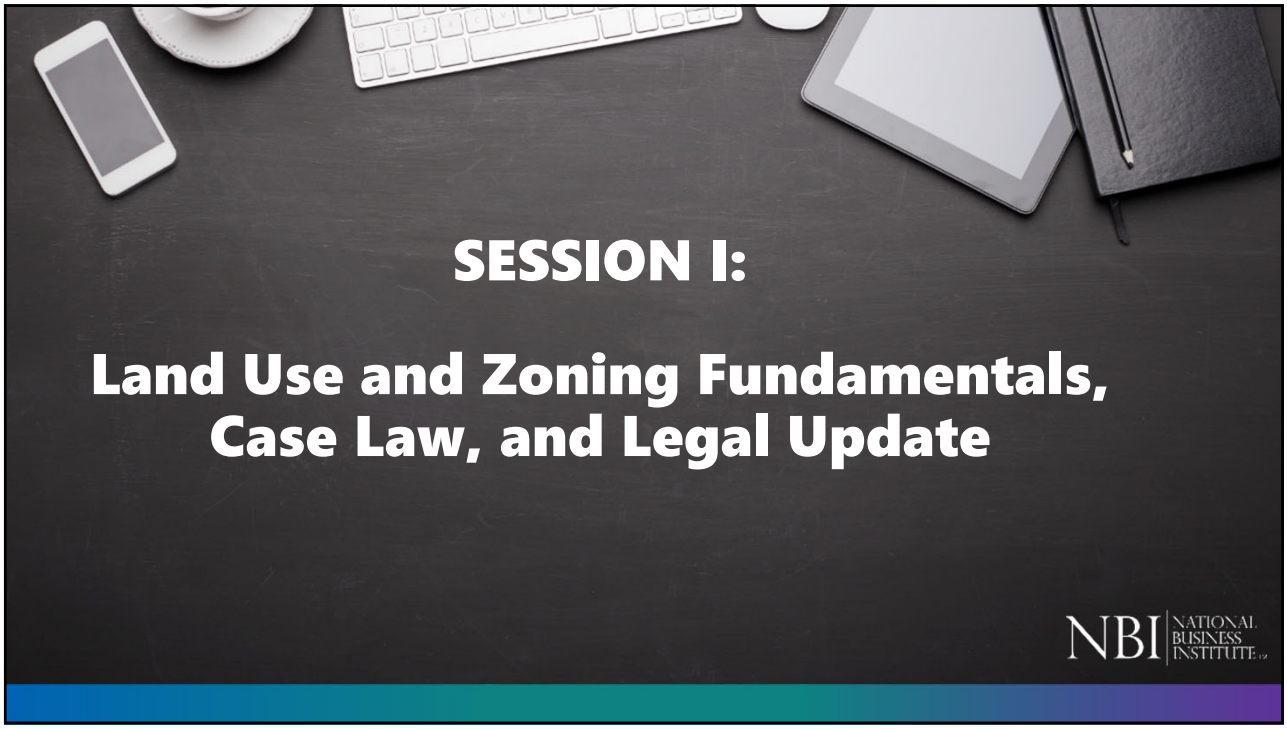
SESSION I:
Land Use and Zoning Fundamentals,
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GRETTA C. SPENDLOVE

ABOUT ME

- Shareholder, Board of Directors

  DENTONS DURHAM JONES PINEGAR P.C.
  111 S. Main Street, Suite 2400
  Salt Lake City, UT 84111

- Ranked in Chambers USA (2019-2021)
- Practice Areas: Real Estate
  Business & Finance,
  Intellectual Property

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QUESTION

What standards does state law set for local land use decisions?

ANSWER

Utah adopted a Land Use, Development, and Management Act ("LUDMA") in 2005 which sets broad standards. Local governments can enact ordinances, so long as they comply with LUDMA.

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Comparison of Land Use and Zoning

LAND USE:

Full collection of powers and responsibilities held by governmental entities to regulate use of real property.

ZONING:

One of those powers/responsibilities.

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Land Use, Development, and Management Act (2005) (LUDMA)

Enabling State Statutes for Cities/Towns:

Utah Code Annotated (UCA) Title 10 Chapter 9a (see **Exhibit A**)

Enabling State Statutes for Counties:

UCA Title 17, Chapter 27a

Both of the above are narrowed by state and federal statutes, constitutional law, local procedures, and case law.

A table of contents for LUDMA is provided as **Exhibit B**.

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General Plans

- Under LUDMA, each county and municipality is required to establish a general plan that contains guidelines for proposed future development within its territorial limits.
- General plans are recommended to the corresponding legislative body by local planning commissions.
- City/town websites typically post a current general plan.

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Characteristics of Zoning

- Under LUDMA, legislative bodies (city councils, city planning commissions, county commissions, etc.) have the authority to divide land into zones, with specified uses.
- Zoning can fulfill different purposes, such as environmental conservation, restraint of urban sprawl, provision of moderate and low income housing, and prevention of land use conflicts.
- Under LUDMA, the legislative bodies have the authority to adopt and amend zoning maps, establish local zoning ordinances, and delegate approval functions to local boards and staff.

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Characteristics of Zoning (cont'd)

- Zoning maps designate the zones to which each land parcel in a given territory (county or city/town) belongs.
- A zoning map for the city of South Salt Lake is provided as an example of a zoning map (see **Exhibit C**).
- Zoning ordinances specify allowed uses and conditional uses for each zone, and situations in "variances" from specified uses may be obtained.

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Overview of Approval Process

- Developers requesting project approvals submit applications to land use staff of the governmental entity. There are separate applications for different types of projects (e.g., subdivisions, buildings, residences).
- Project applications must take into account existing zoning for the parcel, and requirements for needed zoning changes, whether through amendment, conditional use, or variance.

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Overview of Approval Process (cont'd)

- Zoning ordinances specify decisions that can be made at the staff level, that must be approved by the Planning Commission, and for which a Planning Commission recommendation is requested but that ultimately require legislative body approval.
- An sample ordinance specifying approval tiers is provided as Exhibit D.

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Legislative Decisions

- Legislative decisions are made by the executive body, i.e., the mayor, city council, or county commission. Legislative decisions include the following:
  - Adopting the general plan;
  - Adopting or amending the zoning ordinance;
  - Rezoning property to a new classification;
  - Adopting a subdivision ordinance or any other local law that will be placed in the ordinance book; and
  - Setting uniform, printed development standards, codes, and regulations applicable generally to land use within the city, as opposed to a specific development approval for a specific, isolated application.

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Administrative Decisions

- Administrative decisions implement the rules and ordinances enacted by the legislative body, although the legislative body may, within limits set by statute, expand or limit the jurisdiction of the planning commission. Examples of administrative decisions may include :
  - Subdivision approvals;
  - Approval of variances;
  - Decisions interpreting the meaning of the ordinances;
  - Appeals from decisions of zoning officials;

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Administrative Decisions (cont'd)

- Issuing and enforcing building permits;
- Zoning enforcement;
- Regulation of nonconforming (grandfathered) uses;
- Any other decision not made by the legislative body;
- Any decision, even if made by the legislative body, not resulting in a change to the city limits, zoning map, ordinances, or code books.

- A final decision of 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.

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Planning Commission Recommendations to Legislative Bodies

(UCA Section 10-9a-302)

(1) a general plan and amendments to the general plan;

(2) land use ordinances, zoning maps, official maps, and amendments;

(3) an appropriate delegation of power to at least one designated land use authority to hear and act on a land use application;

(4) an appropriate delegation of power to at least one appeal authority to hear and act on an appeal from a decision of the land use authority; and

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(UCA Section 10-9a-302) (cont'd)

(5) application processes that:

(a) may include a designation of routine land use matters that, upon application and proper notice, will receive informal streamlined review and action if the application is uncontested; and

(b) shall protect the right of each:

(i) applicant and third party to require formal consideration of any application by a land use authority;

(ii) applicant, adversely affected party, or municipal officer or employee to appeal a land use authority's decision to a separate appeal authority; and

(iii) participant to be heard in each public hearing on a contested application.

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Vested Rights

- Zoning decisions must be made with consideration of vested rights of applicants.
- Western Land Equities, Inc. v. City of Logan, 617 P.2d 388 (Utah 1980).

  An applicant for subdivision approval or a building permit is entitled to favorable action if the application conforms to the zoning ordinance in effect at the time of the application, unless there are pending changes in zoning ordinances that would prohibit the use applied for, or unless the municipality or county could show a compelling, countervailing reason for exercising its police power retroactively to the date of application.

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Vested Rights (cont'd)

- Western Land Equities distinguished by:

  Patterson Construction Inc. v. American Fork City, 67 P.3d 466 (Utah 2003);

  Mouty v. The Sandy City Recorder, 122 P.3d 521 (Utah 2005); and

  Baker v. Park City Municipal Corporation, 405 P.3d 962 (Ct. App. UT 2017).

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Estoppel

- The Utah Court of Appeals defined the "zoning estoppel doctrine" as follows, in Checketts v. Providence City, 420 P.3d 71 (Ct. App. 2018):

> The zoning estoppel doctrine estops a government entity from exercising its zoning powers to prohibit a proposed land use when a property owner, relying reasonably and in good faith on some governmental act of omission, has made a substantial change in position or incurred such extensive obligations or expenses that it would be highly inequitable to deprive the owner of his right to complete his proposed development. Id. at 78

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Estoppel (cont'd)

- The zoning estoppel doctrine does not apply unless the government entity "committed an act or omission upon which the developer could rely in good faith," and the "action upon which the developer claims reliance must be of a clear, definite and affirmative nature." Checketts.
- Exceptional circumstances must be present, such as the intentional discriminatory application of the ordinance, before zoning estoppel will apply to preclude government action.

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Moratoria

- One problem in zoning administration is maintaining the status quo while proposed changes are being studied.
- Local governments attempt to preserve the status quo pending such amendments through the use of interim zoning or moratoria.

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Moratoria (cont'd)

- Scherbel v. Salt Lake City Corporation, 758 P.2d 897 (UT 1988).

  A property owner had no vested right to build under the zoning classification in effect at the time of his application for conceptual approval, as a zoning change was pending prior to his application and the property owner and his architect were aware of the pending change.

- "Allowing persons to obtain vested rights under a zoning ordinance merely by filing preliminary and incomplete papers would defeat the very purpose of zoning regulations." Scherbel

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Building Codes

- Utah legislature adopts construction codes that are followed by the state and each political subdivision of the state, including all counties and cities. 15A-1-204 (1)(a).
- The State Construction Code is a nationally recognized construction code adopted by the state with modifications, as recommended by the Uniform Building Code Commission.
- The state Building Code is then administered by "compliance agencies," which are the agencies of the state and local political subdivisions that issue permits for construction regulated under the codes.

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Building Codes (cont'd)

- The Building Code is broadly applicable, including to the following:

  A person shall comply with the applicable provisions of the State Construction Code when: (i) new construction is involved; and (ii) the owner of an existing building, or the owner's agent, is voluntarily engaged in: (A) the repair, renovation, remodeling, alteration, enlargement, rehabilitation, conservation, or reconstruction of the building; or (B) changing the character or use of the building in a manner that increases the occupancy loads, other demands, or safety risks of the building.

  UCA 15A-1-204(1)(b)

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LD III LLC v. Mapleton City, 462 P.3d 816 (Ct. App. UT 2020)

- When do landowner/city agreements run with the land? What issues are subject to referendum?
- The covenant between the city and the prior owner of the undeveloped property, conferring zoning rights on the prior owner, did not run with the land to the existing owner who obtained the property in foreclosure.
- Language in the contract stated that the zoning rights passed contractually only to parties affiliated with the prior owners or upon express prior written approval by the city.

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LD III LLC v. Mapleton City, 462 P.3d 816 (Ct. App. UT 2020)

- The court ruled that there was no ambiguity, but that the language about affiliates merely clarifies the conditions under which the contract would run with the land.
- The referendum overturning the city council's modification of the zoning designation, to allow a 269-unit development plan on the landowner's property was valid.
- Site-specific rezoning is a legislative act, and thus subject to referendum.

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Staker v. Town of Springdale, 481 P.3d 1044 (Ct. App. UT 2020)

- What is the standard for determining whether an act of a municipality is "arbitrary and capricious?"
- A decision of a land use authority is arbitrary and capricious when it is not supported by substantial evidence in the record.
- "Substantial evidence" sufficient to support the decision of a land use authority is "that quantum and quality of relevant evidence that is adequate to persuade a reasonable mind."

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Staker v. Town of Springdale, 481 P.3d 1044 (Ct. App. UT 2020)

- Substantial evidence supported the town council's decision that the property owner's proposed use of property for a commercial parking lot would unreasonably interfere with the lawful use of surrounding properties where the proposed lot was in a residential area, would require the removal of one residence, and would be less than 20 feet from another residence, the front yard of a third residence would look into the proposed lot, and the community development report and neighboring landowners expressed concern about the likely increase in traffic, noise, and general activity, and the ability to appropriately screen the proposed lot.

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Wallingford v. Moab City, 459 P.3d 1039 (Ct. App. UT 2020)

- What is contract zoning? Is it legal?
- Moab ordinances require a public hearing prior to approval of major modifications to a project. At one point, the city wrote the developer, specifying that the modifications were major. However, after negotiations with the developer, the city agreed to identify the modifications as minor so as to avoid a public hearing.

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Wallingford v. Moab City, 459 P.3d 1039 (Ct. App. UT 2020)

- The practice of contracting around municipal zoning requirements is known as "contract zoning."
- Some jurisdictions, such as Utah, do not have a statute specifically permitting contract zoning, but it is usually found to be illegal because contract zoning bypasses the requirements of due process, notice, and hearings which are required in order to exercise the legislative power to enact and amend zoning regulations.

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North Monticello Alliance v. San Juan County, 486 P.3d 537 (Ct. App. UT 2020)

- When do third parties have standing to appeal a planning and zoning commission decision? Do they have a right to a hearing to present evidence?
- Owners of undeveloped land near a wind farm sought review of a decision of the San Juan County Commission which upheld the Planning Commission's decision not to revoke a conditional use permit ("CUP") for the farm.

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North Monticello Alliance v. San Juan County, 486 P.3d 537 (Ct. App. UT 2020)

- The appeals court found that the neighboring landowners were adversely affected or aggrieved by the Planning Commission's decision.
- They thus were entitled to appeal the decision and also were entitled to due process which requires, at a minimum, "adequate notice and an opportunity to be heard in a meaningful manner."

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Salt Lake City Corporation v. Kunz, 476 P.3d 989 (Ct. App. UT 2020)

- What is the standard for complying with procedural requirements in eminent domain proceedings?
- Salt Lake City initiated an action against owners of land south of the airport to obtain an air rights easement by condemnation.
- The trial court found that the city failed to comply with various requirements of UCA Section 78B-6-504(2)(c), specifying the procedures for initiating a condemnation action.

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Salt Lake City Corporation v. Kunz, 476 P.3d 989 (Ct. App. UT 2020)

- After years of litigation, the trial court dismissed the case because the city had failed to comply with initial requirements of notice and hearing.
- Government entities must follow the exact statutory requirements for bringing a condemnation action under UCA 78B-6-504(2)(c).

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Kodiak America LLC v. Summit County, 491 P.3d 962 (Ct. App. 2021)

- What are the requirements for res judicata and privity in zoning decisions?
- The plaintiff purchased land in an agricultural subdivision and obtained a grading permit from the county to install a motocross track on that property.
- After receiving complaints about the motocross track, the county sent a cease and desist letter to the plaintiff.
- The appeals authority found that zoning estoppel existed and restored the grading permit to the plaintiff.

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Kodiak America LLC v. Summit County, 491 P.3d 962 (Ct. App. 2021)

- Neighbors petitioned the district court for review of the appeals authority decision (the "Johnson case"), but did not join the plaintiff in that action.
- The Johnson court set aside the appeals authority decision and claimed it was res judicata and binding on the plaintiff, despite refusing to allow the plaintiff to intervene, because the county had adequately represented the plaintiff's interests.

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Kodiak America LLC v. Summit County, 491 P.3d 962 (Ct. App. 2021)

- The county then issued a Notice of Violation to the plaintiff, for operating its motocross track, and the plaintiff sued the county.
- Trial court determined that there was no res judicata from the Johnson decision because the county's and plaintiff's interests in the Johnson case were not the same (i.e., no privity), and the appeals court upheld that ruling.

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Legislative Update

The 2022 Utah Legislature adopted H.B. 303, "Local Land Use Amendments," which does the following:

- Modifies provisions regarding when annexations may be challenged in district court;
- Modifies notice requirements after a municipality receives a request for disconnection;
- Provides specific notice requirements related to a municipality's or county's proposed modifications to zoning code text;

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Legislative Update (cont'd)

- Modifies notice requirements related to an amendment to public improvements in a subdivision of development;
- Removes a prohibition on imposing a land use regulation under certain circumstances;
- Modifies authority of a municipality or county to require development of moderate income housing as a condition of approval of a land use regulation;
- Modifies evidence requirements related to a noncomplying structure or a nonconforming use;

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Legislative Update (cont'd)

- Authorizes a municipality or county to determine if combining lots constitutes a subdivision amendment;
- Modifies the requirements for preparation of a subdivided plat by a surveyor;
- Modifies provisions related to determining when a land use decision is illegal;
- Creates a process to establish an agreed boundary between landowners when a boundary is disputed or uncertain.

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Framework of Constitutional Challenges

- The ability of governmental entities to regulate land use derives from the inherent police power of the state.
- There are limits on that power, however, under the Fifth and Fourteenth Amendments to the Constitution, as well as under the Civil Rights Act, 42 U.S.C. Section 1983, and Article 1 Section 7 of the Utah Constitution.

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Most Common Constitutional Challenges

The most common constitutional attacks on zoning and land use actions include:

- Substantive due process;
- Takings without just compensation,
- Due process challenges, and
- Equal protection attacks

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Substantive Due Process

- Actions of governments affecting land use cannot be arbitrary and capricious, although governmental actions will generally be upheld otherwise, under the exercise of the police power.
- "All…ordinances enacted through the exercise of the police power are considered valid unless they do not rationally promote the public health, safety, morals, and welfare.'" Patterson v. Utah County Board of Adjustment, 893 P.2d 602 (Utah Ct. App. 1995)

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Taking Cases

- The Takings Clause of the Fifth Amendment of the U.S. Constitution, applied to the states through the Fourteenth Amendment, provides: "Nor shall private property be taken for public use, without just compensation."
- There is a similar clause in Article 1 Section 22 of the Utah Constitution.
- Challenges to condemnation are often based on "taking without just compensation," as are land use decisions establishing zones where severely limited uses or construction are allowed.

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Due Process Challenges

- Procedural due process challenges assert that the procedure used by a government entity is unfair to aggrieved parties.
- Adequate notices, hearings, and ability to present evidence are the basics of due process.

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Equal Protection

- Equal protection claims are challenges to how the zoning ordinance is being applied.
- Zoning ordinances must be enforced in a reasonable and nondiscriminatory manner in order to satisfy equal protection requirements, and whether they are so uniformly enforced is a question of fact.

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Equal Protection (cont'd)

- However, just finding some places where the property owner is treated differently will likely not be sufficient.
- Because a governmental zoning department cannot reasonably be expected to be aware of all possible zoning violations within the jurisdiction, the mere existence of a similar improper use most likely does not establish discriminatory enforcement.

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UTAH LAND USE AND ZONING FROM START TO FINISH

Session I:

Land Use and Zoning Fundamentals, Case Law, and Legal Update

Gretta C. Spendlove
Dentons Durham Jones Pinegar P.C.
111 S. Main Street, Suite 2400
Salt Lake City, Utah 84111
(801) 415-3000
gretta.spendlove@dentons.com

A. LAND USE VS. ZONING

1. Comparison of Land Use and Zoning. "Land use" refers to the full collection of powers and responsibilities held and exercised by governmental entities with regard to regulating use of real property. Those powers include the entire master plan process, as regulation-specific uses on specific parcels. "Zoning" refers to only one of a governmental entity's land use powers and responsibilities.

2. Land Use. Counties, cities, and towns obtain their land use regulation powers from the state constitution and state statutes. The very broad enabling statute for cities and towns contained in Utah Code Annotated ("UCA") Section 10-9a-102 is set forth on Exhibit A. There is a similar enabling statute for counties contained in UCA Section 17-27a-102. The broad powers set forth in those statutes are, however, narrowed by the following:

- State statutes
- Federal statutes
- Constitutional law
- Local procedures
- Case law

In 2005, the Utah legislature enacted the Utah Land Use, Development, and Management Act ("LUDMA"), codified in Chapter 9a of Title 10 of the UCA for municipalities and in Chapter 27a of Title 17 of the UCA for counties. That statute includes provisions regulating zoning and land use law for all governmental entities throughout the state. The table of contents for LUDMA is set forth on Exhibit B. LUDMA includes an enabling provision listing a number points as to which local governments may enact or undertake the powers granted by LUDMA:

> To accomplish the purposes of this chapter, municipalities may enact all ordinances, resolutions, and rules and may enter into other forms of land use controls and development agreements that they consider necessary or appropriate for the use and development of land within the municipality, 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, considerations of surrounding land uses and the balance of the foregoing purposes with a landowner's private property interests, height and location of vegetation, trees, and landscaping, unless expressly prohibited by law.
> UCA 10-9a-102(2)

Governmental entities are required, by LUDMA, to adopt general plans setting forth general guidelines for proposed future development of the land within the territorial limits of the county or municipality, including a general plan for the present and future needs of the community and the growth and development of land within the community. See USA Sections 17-27-401(1) and

10-9-401(1). The general plan is recommended to the legislative body (e.g., city council, county commission) by the local planning commission. See UCA Sections 10-91-403(10(b) and 17 27a-403(1)(b). They can also adopt and amend zoning maps and establish local zoning ordinances. See UCA Sections 10-9a-502(2), 17-27a-502(2), 10-9a-501 to 503 and 17-27a-501 to 503. Legislative bodies of governmental entities are required by LUDMA to create Planning Commissions, to which the legislative body delegates many land use recommendations and decisions. See UCA Sections 10-9a-301 and 17-27a-301(1), (2), and (8).

3. Zoning. As stated above, under LUDMA, legislative bodies (city councils, county commissions) adopt and amend zoning maps and establish local zoning ordinances as part of their broader land use authority. Under LUDMA, certain zoning approval functions can then be delegated by the legislative body to other local boards and staff. LUDMA states, "The 'Land Use Authority' ("LUA") is the "person, board, commission, agency, or other body designated" by the legislative body "to act upon a land use application." Id. at 103(23) (city), 103(27) (county). Typically, zoning change applications are first processed by staff and are then referred to the Planning Commission appointed by the legislative body for further approval and review, if required by ordinance. Certain changes, such as amendment of zoning maps or ordinances, then require the legislative body's approval. LUDMA sets forth an appeals process that must be followed prior to filing suit to challenge a zoning decision.

B. HOW THE APPROVAL PROCESS WORKS: A BRIEF OVERVIEW

Zoning ordinances typically consist of a zoning map designating the zone to which each parcel in the governmental entity belongs. Zoning ordinances then specify the allowed uses and conditional uses for each zone, as well as

situations in which "variances" from the uses specified for the zone may be obtained. A copy of a zoning map and list of uses for each zone for the City of South Salt Lake is attached as Exhibit C. Any application for approval of a project will take into consideration the existing zoning for the parcel on which the project will be located, as well as the requirements for any change in zoning, whether that is a zoning amendment, conditional use, or variance.

Developers requesting approval for a project typically submit an application with the land use staff for the governmental entity. There are separate applications for different types of developments, such as subdivisions, buildings, and residences.

Zoning ordinances specify the types of decisions that can be made at the staff level, decisions that must be approved by the Planning Commission, and decisions for which a Planning Commission recommendation is requested, but that ultimately require legislative body approval. An example of a zoning ordinance presenting those tiers of approval is attached as Exhibit D.

C. THE SCOPE OF ZONING BOARD AUTHORITY

An understanding of the difference between legislative decisions and administrative decisions is critical in order to understand the jurisdiction of the planning commission. Legislative decisions are made by the executive body, which is the mayor, city council, or the county commission. Administrative decisions are made by the planning commission or other administrative bodies, according to local ordinance. Legislative decisions include the following:

- Adopting the general plan;
- Adopting or amending the zoning ordinance;
- Rezoning property to a new classification;

- Adopting a subdivision ordinance or any other local law that will be placed in the ordinance book; and
- Setting uniform, printed development standards, codes, and regulations that are applicable generally to land use within the city, as opposed to a specific development approval for a specific, isolated application.

Administrative decisions implement the rules and ordinances enacted by the legislative body, although the legislative body may, within limits set by statute, expand or limit the jurisdiction of the planning commission. Examples of administrative decisions in the land use area may include:

- Subdivision approvals[1];
- Approval of variances;
- Decisions interpreting the meaning of the ordinances;
- Appeals from decisions of zoning officials;
- Issuing and enforcing building permits;
- Zoning enforcement;
- Regulation of nonconforming (grandfathered) uses;
- Any other decision not made by the legislative body;
- Any decision, even if made by the legislative body, not resulting in a change to the city limits, zoning map, ordinances, or code books.

The distinctions between legislative and administrative decisions and the standards for appealing them are discussed in the following cases: Bradley v. Payson City Corp., 17 P.3d 1160 (Utah App. 2001), vacated 70 P.3d 47 (Utah 2003); Harmon City, Inc. v. Draper City, 997 P.2d 321 (Utah App. 2000); and Wadsworth Construction v. West Jordan, 997 P.2d 1240 (Utah App. 2000). The distinctions between legislative and administrative decisions, for purposes of validity and appeal, are also set forth in UCA Sections 10-9a-802(3)(b) and (c) and 17-27a-802(3)(b) and (c), as follows:

[1] Although some cities and counties require final approval to be made by the mayor, city council, or county commission

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 purposes of this chapter and is not otherwise illegal.

A final decision of 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 Utah legislature has defined the powers and duties of the planning commissions as follows (UCA Section 10-9a-302):

The planning commission shall make a recommendation to the legislative body for:

(1) a general plan and amendments to the general plan;
(2) land use ordinances, zoning maps, official maps, and amendments;
(3) an appropriate delegation of power to at least one designated land use authority to hear and act on a land use application;
(4) an appropriate delegation of power to at least one appeal authority to hear and act on an appeal from a decision of the land use authority; and
(5) application processes that:
  (a) may include a designation of routine land use matters that, upon application and proper notice, will receive informal streamlined review and action if the application is uncontested; and
  (b) shall protect the right of each:
    (i) applicant and third party to require formal consideration of any application by a land use authority;
    (ii) applicant, adversely affected party, or municipal officer or employee to appeal a land use authority's decision to a separate appeal authority; and
    (iii) participant to be heard in each public hearing on a contested application.

In 2005, the Utah land use codes were revised. The revisions to 10-9a-302(5) and 17-27a-302(1)(e) specified that the planning commission should streamline methods of dealing with routine administrative matters. The purpose was to have uncontested matters handled without formality, but to give affected parties a formal review if desired. Subdivision approvals, variances,

conditional use permits, and other land use decisions were all to have such streamlined procedures.

Since the above delegation of functions is done separately by each local planning commission, rather than designation by state statute, there is variability in the approvals that are handled at the levels of staff, planning commission, legislative body, and appeals boards. However, typically, many of the review and approval functions are retained by the planning commission for itself. For instance, applications for amendments to the zoning ordinances in Salt Lake City are first processed by staff, referred to the planning commission for review and recommendation, and then finally approved by the Salt Lake City Council.

D. VESTED RIGHTS, ESTOPPEL, AND MORATORIA

1. **Vested Rights.** Utah courts have recognized that zoning decisions must be made with consideration of vested rights of applicants. In Western Land Equities, Inc. v. City of Logan, 617 P.2d 388 (Utah 1980), a landowner applied for approval of a development of single-family homes in a manufacturing zone which, at the time of the application, allowed for single-family residences. After the application was filed, the planning commission and municipal council changed the requirements and went on record as opposing residential subdivisions in M-1 manufacturing zones. The planning commission then rejected the proposed subdivision on the basis that "development of the proposed residential subdivision was contrary to the land use ordinance and to the city's master plan." The Utah Supreme Court held that an applicant for subdivision approval or a building permit is entitled to favorable action if the application conforms to the zoning ordinance in effect at the time of the application, unless there are pending changes in zoning ordinances that would

prohibit the use applied for, or unless the municipality or county could show a compelling, countervailing reason for exercising its police power retroactively to the date of application.

The Western Land Equities decision has never been overruled, but its ruling has been distinguished by the following cases: Patterson Construction Inc. v. American Fork City, 67 P.3d 466 (Utah 2003); Mouty v. The Sandy City Recorder, 122 P.3d 521 (Utah 2005); and Baker v. Park City Municipal Corporation, 405 P.3d 962 (Ct. App. UT 2017). In Patterson, the Utah Supreme Court held that the developers had no due process or liberty interest in the approval of projects, nor had they shown that any of their development projects was blocked by a retroactive application of an amended zoning ordinance. In Mouty, the Utah Supreme Court held that a developer that sought and received from the city council an amendment to a zoning district that applied to property it intended to develop did not obtain "vested development rights" in the property that overrode a later citizen group's successful efforts to block the use by referendum. The court noted that the Utah Constitution prevented referable ordinances from taking effect until local voters had the right to exercise their right to seek referendum, and the exercise of the people's referendum rights was of such importance that it overrode the developer's economic interests.

In Baker, the Utah Court of Appeals upheld Park City's denial of a developer's application for a plat amendment. The developer claimed, among other arguments, that the plat amendment should have been granted, because the plat, as amended, would meet the existing zoning requirements. The developer relied on Western Land Equities for that position. The court distinguished Western Land Equities, pointing out that this case involved a plat

amendment, rather than the plat for a new subdivision. The standard for plat approvals is that the plat "shall" be approved if the subdivision conforms to municipal ordinances, while the standard for plat amendments is that the amendment "may" be approved for good cause.

2. **Estoppel.** In zoning matters, the concept of estoppel is closely tied to the concept of vested rights. The Utah Court of Appeals defined the "zoning estoppel doctrine" as follows, in Checketts v. Providence City, 420 P.3d 71 (Ct. App. 2018):

> The zoning estoppel doctrine estops a government entity from exercising its zoning powers to prohibit a proposed land use when a property owner, relying reasonably and in good faith on some governmental act of omission, has made a substantial change in position or incurred such extensive obligations or expenses that it would be highly inequitable to deprive the owner of his right to complete his proposed development. Id. at 78

The Checketts court noted that the zoning estoppel doctrine does not apply unless the government entity "committed an act or omission upon which the developer could rely in good faith," and the "action upon which the developer claims reliance must be of a clear, definite and affirmative nature." Finally, "exceptional circumstances must be present, such as the intentional discriminatory application of the ordinance, before zoning estoppel will apply to preclude government action. Id. The court determined that the zoning estoppel doctrine did not apply in this case, in which Providence City approved their application for a building permit in 2005, which indicated that their intended use for their lot would be commercial, but later ruled that their home business was never a permitted use of the lot in a single-family traditional zone. Another Utah case considering zoning estoppel is Utah County v. Baxter, 635 P.2d 61 (Utah 1981).

3. Moratoria. One problem in zoning administration is that of maintaining the status quo while proposed changes are being studied. The decision to change a zoning classification from a use permitting intensive development (such as multiple family residential or commercial) to single-family or agricultural classifications, or the reduction of permitted uses in existing zone classifications, is likely to result in a race by landowners to commence the still-permitted more intense development, or to change position sufficiently to acquire vested rights to proceed in the face of any subsequently enacted amendment making such development illegal. Landowners are particularly aggressive in changing position if the amendment process is delayed by multiple hearings in advance of the zoning amendment. For this reason, many local governments attempt to preserve the status quo pending such amendments through the use of interim zoning or moratoria.

In Scherbel v. Salt Lake City Corporation, 758 P.2d 897 (UT 1988), the Utah Supreme Court held that a property owner had no vested right to build under the zoning classification in effect at the time of his application for conceptual approval, as a zoning change was pending prior to his application and the property owner and his architect were aware of the pending change. The court stated, "Allowing persons to obtain vested rights under a zoning ordinance merely by filing preliminary and incomplete papers would defeat the very purpose of zoning regulations." Id. at 901.

E. REGULATORY FRAMEWORK: STATE BUILDING CODE, COMPREHENSIVE PLANS, LOCAL ORDINANCES, AND MORE

As stated above, LUDMA provides the statutory framework for land use decisions. Master plans and local ordinances regulating zoning, including

conditional uses, variances, and approval of subdivision plats, are all controlled by and enacted under authority of LUDMA.

Building codes are a separate matter. They are governed by UCA Sections 15A-1-101 to 15A-4-701. Basically, the state legislature adopts construction codes that are followed by the state and each political subdivision of the state, including all counties and cities. 15A-1-204 (1)(a). The State Construction Code is a nationally recognized construction code adopted by the state with modifications, as recommended by the Uniform Building Code Commission. The Uniform Building Code Commission includes representatives of various constituencies, including a candidate nominated by the Utah League of Cities and Towns, a licensed building inspector employed by a political subdivision of the state, an engineer, an architect, and other individuals as specified in 15A-1-203.

The state Building Code is then administered by "compliance agencies," which are the agencies of the state and local political subdivisions that issue permits for construction regulated under the codes. The Building Code is broadly applicable, including to the following:

> A person shall comply with the applicable provisions of the State Construction Code when: (i) new construction is involved; and (ii) the owner of an existing building, or the owner's agent, is voluntarily engaged in: (A) the repair, renovation, remodeling, alteration, enlargement, rehabilitation, conservation, or reconstruction of the building; or (B) changing the character or use of the building in a manner that increases the occupancy loads, other demands, or safety risks of the building. UCA 15A-1-204(1)(b)

F. CURRENT CASE LAW AND LEGISLATIVE UPDATES

The ultimate arbiter of land use issues is the courts. Once a final decision has been made by the local entity, the petitioner has a limited period within which it may appeal the decision to the courts. Depending on the type of

decision, the judicial review may be "de novo" (evidence may be presented again) or by review of the administrative record, without additional evidence. In the latter case, courts defer to the administrative agency and uphold its decision unless it was arbitrary or not based upon the evidence. It is thus important to win the decision at the local, administrative level, if at all possible.

A summary of some land use cases decided by the courts in the last couple of years is set forth below:

1. **Case Law.** The following land use cases were decided between 2020 and 2022:

a. LD III LLC v. Mapleton City, 462 P.3d 816 (Ct. App. UT 2020). When do landowner/city agreements run with the land? What issues are subject to referendum?

A landowner brought an action against Mapleton City, seeking a declaratory judgment that (i) a proposed plan for development of its 170-acre property was allowed under zoning ordinances or the prior owner's agreement with the city, and (ii) challenging the referendum that overturned the city council's zoning modification allowing a similar development plan. The trial court granted summary judgment to the city, and the landowner appealed.

Among other rulings, the appeals court determined that the covenant between the city and the prior owner of the undeveloped property, conferring zoning rights on the prior owner, did not run with the land to the existing owner who obtained the property in foreclosure. This was true, even though the agreement iindicated that it would be binding on successors and should be recorded as a covenant running with the property. The contract also stated that the zoning rights passed contractually only to parties affiliated with the prior

owners or upon express prior written approval by the city. The court ruled that there was no ambiguity, but that the language about affiliates merely clarifies the conditions under which the contract would run with the land

The court also determined that the referendum overturning the city council's modification of the zoning designation, to allow a 269-unit development plan on the landowner's property was valid. Site-specific rezoning is a legislative act, and thus subject to referendum

b. Staker v. Town of Springdale, 481 P.3d 1044 (Ct. App. UT 2020). What is the standard for determining whether an act of a municipality is "arbitrary and capricious?"

A landowner appealed a decision of a town council denying his application to operate a public parking lot. The trial court upheld the town council's decision and the landowner appealed. The court confirmed that it would not disturb the decision of a land use authority unless the decision was arbitrary and capricious or illegal. A decision of a land use authority is arbitrary and capricious when it is not supported by substantial evidence in the record. "Substantial evidence" sufficient to support the decision of a land use authority is "that quantum and quality of relevant evidence that is adequate to persuade a reasonable mind."

In this case, substantial evidence supported the town council's decision that the property owner's proposed use of property for a commercial parking lot would unreasonably interfere with the lawful use of surrounding properties where the proposed lot was in a residential area, would require the removal of one residence, and would be less than 20 feet from another residence, the front yard of a third residence would look into the proposed lot, and the community development report and neighboring landowners expressed concern about the

likely increase in traffic, noise, and general activity, and the ability to appropriately screen the proposed lot.

c. Wallingford v. Moab City, 459 P.3d 1039 (Ct. App. UT 2020). What is contract zoning? Is it legal?

Citizens brought an action against Moab City seeking to enjoin construction on a development project for which Moab City approved major modifications without a public hearing, after contracting with the developer and site owner to deem modifications minor. Moab ordinances require a public hearing prior to approval of major modifications to a project. At one point, the City wrote the developer, specifying that the modifications were major. However, after negotiations with the developer, the City agreed to identify the modifications as minor so as to avoid a public hearing. The trial court entered an order for summary judgment in favor of the city, but the appeals court reversed and remanded the case back to the trial court.

The practice of contracting around municipal zoning requirements is known as "contract zoning." Some jurisdictions have a statute that specifically permits contract zoning in certain circumstances. But, in jurisdictions, such as Utah, that do not have a statute specifically permitting contract zoning, this practice has been found illegal by numerous state courts. One reason for courts finding illegality is because contract zoning bypasses the requirements of due process, notice, and hearings which are required in order to exercise the legislative power to enact and amend zoning regulations.

d. North Monticello Alliance v. San Juan County, 486 P.3d 537 (Ct. App. UT 2020). When do third parties have standing to appeal a planning

and zoning commission decision? Do they have a right to a hearing to present evidence?

Owners of undeveloped land near a wind farm sought review of a decision of the San Juan County Commission which upheld the Planning Commission's decision not to revoke a conditional use permit ("CUP") for the farm. The trial court granted summary judgment for the county commission, but the appeals court remanded to allow the neighboring landowners to have an opportunity to be heard before the Planning Commission.

The appeals court found that the neighboring landowners were adversely affected or aggrieved by the Planning Commission's decision not to revoke the CUP for the wind farm. They thus were entitled to appeal the decision and also were entitled to due process which requires, at a minimum, "adequate notice and an opportunity to be heard in a meaningful manner."

e. Salt Lake City Corporation v. Kunz, 476 P.3d 989 (Ct. App. UT 2020). What is the standard for complying with procedural requirements in eminent domain proceedings?

Salt Lake City initiated an action against owners of land south of the airport to obtain an air rights easement by condemnation. The trial court found that the City failed to comply with various requirements of UCA Section 78B-6-504(2)(c), specifying the procedures for initiating a condemnation action. After years of litigation, the trial court dismissed the case because the city had failed to comply with initial requirements of notice and hearing. The appeals court affirmed, stating, "This case offers a feast of legal issues—ranging from procedural to constitutional—but its main course is a cautionary tale to

government entities: they must follow the exact statutory requirements for bringing a condemnation action under UCA 78B-6-504(2)(c)."

f. Kodiak America LLC v. Summit County, 491 P.3d 962 (Ct. App. 2021). What are the requirements for res judicata and privity in zoning decisions?

The plaintiff purchased land in an agricultural subdivision and obtained a grading permit from the county to install a motocross track on that property. After receiving complaints about the motocross track, the county sent a cease and desist letter to the plaintiff. The appeals authority found that zoning estoppel existed and restored the grading permit to the plaintiff. Neighbors petitioned the district court for review of the appeals authority decision (the "Johnson case"), but did not join the plaintiff in that action. The Johnson court set aside the appeals authority decision and claimed it was res judicata and binding on the plaintiff, despite refusing to allow the plaintiff to intervene, because the county had adequately represented the plaintiff's interests. The county then issued a Notice of Violation to the plaintiff, for operating its motocross track, and the plaintiff sued the county. The trial court determined that there was no res judicata from the Johnson decision because the county's and plaintiff's interests in the Johnson case were not the same (i.e., no privity), and the appeals court upheld that ruling. The decision discusses concepts of res judicata and privity in zoning decisions.

2. **Statutes**. The 2022 Utah Legislature adopted H.B. 303, "Local Land Use Amendments," which does the following:

- Modifies provisions regarding when annexations may be challenged in district court;
- Modifies notice requirements after a municipality receives a request for disconnection;
- Provides specific notice requirements related to a municipality's or county's proposed modifications to zoning code text;
- Modifies notice requirements related to an amendment to public improvements in a subdivision of development;
- Removes a prohibition on imposing a land use regulation under certain circumstances;
- Modifies authority of a municipality or county to require development of moderate income housing as a condition of approval of a land use regulation;
- Modifies evidence requirements related to a noncomplying structure or a nonconforming use;
- Authorizes a municipality or county to determine if combining lots constitutes a subdivision amendment;
- Modifies the requirements for preparation of a subdivided plat by a surveyor;
- Modifies provisions related to determining when a land use decision is illegal;
- Creates a process to establish an agreed boundary between landowners when a boundary is disputed or uncertain.

Here is a link to the bill enacting UCA 10-9A-535 and 17-27a-531, and modifying sections of Titles 10, 17, and 57: https://le.utah.gov/~2022/bills/static/HB0303.html.

G. CHALLENGING/DEFENDING THE CONSTITUTIONALITY OF ZONING AND LAND USE ACTIONS

1. Framework of Constitutional Challenges. The ability of governmental entities to regulate land use derives from the inherent police power of the state. There are limits on that power, however, under the Fifth and

Fourteenth Amendments to the Constitution, as well as under the Civil Rights Act, 42 U.S.C. Section 1983, and Article 1 Section 7 of the Utah Constitution.

2. **Most Common Challenges.** The most common constitutional attacks on zoning and land use actions include: substantive due process; takings without just compensation, due process challenges, and equal protection attacks.

3. **Substantive Due Process.** Actions of governments affecting land use cannot be arbitrary and capricious, although governmental actions will generally be upheld otherwise, under the exercise of the police power. This 'arbitrary and capricious' standard is addressed in numerous Utah cases, including the recent Staker case discussed in Section E, above. *Also see* Patterson v. Utah County Board of Adjustment, 893 P.2d 602 (Utah Ct. App. 1995) in which the court stated that "all…ordinances enacted through the exercise of the police power are considered valid unless they do not rationally promote the public health, safety, morals, and welfare.'"

4. **Takings Cases.** The Takings Clause of the Fifth Amendment of the U.S. Constitution, applied to the states through the Fourteenth Amendment, provides: "Nor shall private property be taken for public use, without just compensation." There is a similar clause in Article 1 Section 22 of the Utah Constitution. Landowners may claim they have vested rights in property, and so claim that imposing new and burdensome obligations on the property constitutes an unconstitutional "taking without just compensation." Section D of these materials discusses the vested rights doctrine, which forms one basis for a "takings" argument. Challenges to condemnation are often based on "taking without just compensation," as are land use decisions establishing zones where severely limited uses or construction are allowed, such as the Foothill

Preservation Zone of Salt Lake City. *See* Dolan v. City of Tigard, 512 U.S. 374, 383-84 (1994) for a discussion of the Takings Clause.

5. **Due Process Challenges**. Procedural due process challenges assert that the procedure used by a government entity is unfair to aggrieved parties. Adequate notices, hearings, and ability to present evidence are the basics of due process. In the Wallingford and Kunz cases discussed above, failure to provide adequate notices and hearings formed the basis for the plaintiffs' claims. The court in Kunz , involving failures of procedure in a condemnation case, specifically noted that the case was a "feast" of constitutional and statutory issues.

6. **Equal Protection.** Equal protection claims are challenges to how the zoning ordinance is being applied. Zoning ordinances must be enforced in a reasonable and nondiscriminatory manner in order to satisfy equal protection requirements, and whether they are so uniformly enforced is a question of fact. However, just finding some places where the property owner is treated differently will likely not be sufficient. Because a governmental zoning department cannot reasonably be expected to be aware of all possible zoning violations within the jurisdiction, the mere existence of a similar improper use most likely does not establish discriminatory enforcement.

EXHIBIT A

UTAH CODE TITLE 10 SECTION 9a

Municipal Land Use, Development, and Management Act

Part 1 General Provisions

10-9a-102. Purposes — General land use authority.

(1) The purposes of this chapter are to provide for the health, safety, and welfare, and promote the prosperity, improve the morals, peace and good order, comfort, convenience, and aesthetics of each municipality and its present and future inhabitants and businesses, to protect the tax base, to secure economy in governmental expenditures, to foster the state's agricultural and other industries, to protect both urban and nonurban development, to protect and ensure access to sunlight for solar energy devices, to provide fundamental fairness in land use regulation, and to protect property values.

(2) To accomplish the purposes of this chapter, municipalities may enact all ordinances, resolutions, and rules and may enter into other forms of land use controls and development agreements that they consider necessary or appropriate for the use and development of land within the municipality, 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, considerations of surrounding land uses and the balance of the foregoing purposes with a landowner's private property interests, height and location of vegetation, trees, and landscaping, unless expressly prohibited by law.

(3) (a) Any ordinance, resolution, or rule enacted by a municipality pursuant to its authority under this chapter shall comply with the state's exclusive jurisdiction to regulate oil and gas activity, as described in Section 40-6-2.5.

(b) A municipality may enact an ordinance, resolution, or rule that regulates surface activity incident to an oil and gas activity if the municipality demonstrates that the regulation:

(i) is necessary for the purposes of this chapter;

(ii) does not effectively or unduly limit, ban, or prohibit an oil and gas activity; and

(iii) does not interfere with the state's exclusive jurisdiction to regulate oil and gas activity, as described in Section 40-6-2.5.

EXHIBIT B

MUNICIPAL LAND USE, DEVELOPMENT, AND MANAGEMENT ACT

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EXHIBIT C

SOUTH SALT LAKE CITY ZONING MAP

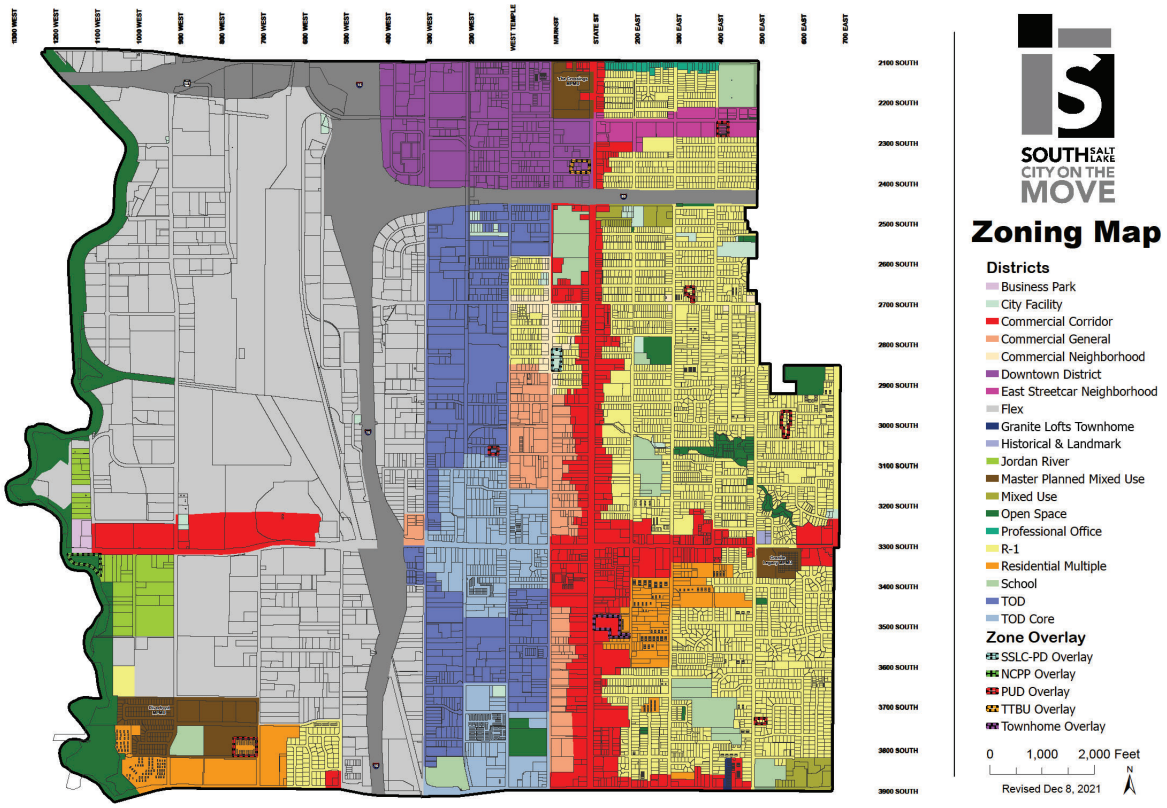

EXHIBIT D

SALT LAKE CITY ZONING ORDINANCES

DECISION MAKING BODIES AND OFFICIALS

[Attached]

PART II. ADMINISTRATION AND ENFORCEMENT

CHAPTER 21A.06

DECISION MAKING BODIES AND OFFICIALS

SECTION:

21A.06.010: SUMMARY OF AUTHORITY:

The City decision making bodies and officials described in this chapter, without limitation upon such authority as each may possess by law, have responsibility for implementing and administering this title in the manner described in sections 21A.06.020 through 21A.06.090 of this chapter. Other City departments also have specific responsibilities related to this title and are identified in the appropriate sections. (Ord. 56-18, 2018: Ord. 48-18, 2018: Ord. 26-95 § 2(3-1), 1995)

21A.06.020: CITY COUNCIL; JURISDICTION AND AUTHORITY:

The City Council has the following powers and duties in connection with the implementation of this title:

A. Adopt, amend or reject a proposed general plan for all or part of the area within the City;

B. Initiate amendments to the text of this title and to the zoning map pursuant to the provisions of section 21A.50.020 of this title;

C. Consider and adopt, reject or modify amendments to the text of this title and to the zoning map pursuant to the provisions of sections 21A.50.030 and 21A.50.040 of this title;

D. Establish a fee schedule for applications for a zoning certificate, zoning amendments, special approvals and any other type of approval required by the provisions of this title; and

E. Take such other actions which are legislative in nature and which are not delegated to other bodies which may be desirable and necessary to implement the provisions of this title. (Ord. 83-96 § 1, 1996: Ord. 26-95 § 2(3-2), 1995)

21A.06.030: PLANNING COMMISSION:

A. General Provisions: The provisions of title 2, chapter 2.07 of this Code shall apply to the Planning Commission except as otherwise set forth in this section.

B. Creation: The Planning Commission is created pursuant to the enabling authority granted by the Municipal Land Use Development and Management Act of the Utah Code.

C. Jurisdiction And Authority: The Planning Commission shall have the following powers and duties in connection with the implementation of this title:

1. Prepare and recommend to the City Council for adoption, a comprehensive, general plan and amendments to the general plan for the present and future needs of the City and the growth and development of the land within the City or any part of the City;

2. Make comprehensive surveys and studies of the existing conditions and trends of growth and of the probable future requirements of the City and its residents as part of the preparation of the general plan;

3. Initiate amendments to the text of this title and to the zoning map pursuant to the provisions of chapter 21A.50 of this title;

4. Review, evaluate and make recommendations to the City Council on proposed amendments to this title pursuant to the procedures and standards set forth in chapter 21A.50 of this title;

5. Review, hear and decide applications for conditional uses, including planned developments, pursuant to the procedures and standards set forth in chapters 21A.54, "Conditional Uses", 21A.55, "Planned Developments", and 21A.59, "Design Review", of this title;

6. Hear and decide appeals from administrative hearing decisions of the Planning Director;

7. Hear and decide applications for subdivision amendments and approvals pursuant to the Municipal Land Use Development and Management Act, title 10, chapter 9a of the Utah Code; and

8. Authorize special exceptions to the terms of this title pursuant to the procedures and standards set forth in chapter 21A.52, "Special Exceptions", of this title.

D. Membership: The Planning Commission shall consist of at least nine (9) up to a maximum of eleven (11) voting members, appointed from among qualified electors of the City in a manner providing balanced geographic, professional, neighborhood and community interests representation.

1. The Director of the Planning Division (or the Planning Director's designated representative) shall serve as an ex officio member without vote.

2. Appointment to a position created by any vacancy shall not be included in the determination of any person's eligibility to serve two (2) consecutive full terms.

E. Meetings: The Planning Commission shall meet at least once each month.

F. Commission Action: A simple majority of the voting members present at the meeting at which a quorum is present shall be required for any action taken. The decision of the Planning Commission shall become effective upon the posting of the record of decision.

G. Public Hearings: The Planning Commission shall schedule and give public notice of all public hearings pursuant to the provisions of chapter 21A.10, "General Application And Public Hearing Procedures", of this title.

H. Conflicts Of Interest: The Planning Commission may, by majority vote of the members present, allow a member, otherwise required to leave due to a conflict, to be present if required by special or unusual circumstances.

I. Removal Of A Member: Any member of the Planning Commission may be removed by the Mayor for violation of this title or any policies and procedures adopted by the Planning Commission following receipt by the Mayor of a written complaint filed against the member. If requested by the member, the Mayor shall provide the member with a public hearing conducted by a Hearing Officer appointed by the Mayor.

J. Policies And Procedures: The Planning Commission shall adopt policies and procedures for the conduct of its meetings, the processing of applications and for any other purposes considered necessary for its proper functioning. (Ord. 14-19, 2019: Ord. 10-16, 2016: Ord. 56-14, 2014)

21A.06.040: APPEALS HEARING OFFICER:

A. Creation: The position of Appeals Hearing Officer is created pursuant to the enabling authority granted by the Municipal Land Use, Development, and Management Act, section 10-9a-701 of the Utah Code Annotated.

B. Jurisdiction And Authority: The Appeals Hearing Officer shall have the following powers and duties in connection with the implementation of this title:

1. Hear and decide appeals from any administrative decision made by the Zoning Administrator in the administration or the enforcement of this title pursuant to the procedures and standards set forth in chapter 21A.16, "Appeals Of Administrative Decisions", of this title;

2. Authorize variances from the terms of this title pursuant to the procedures and standards set forth in chapter 21A.18, "Variances", of this title;

3. Hear and decide appeals of any administrative decision made by the Historic Landmark Commission pursuant to the procedures and standards set forth in section 21A.34.020, "H Historic Preservation Overlay District", of this title;

4. Hear and decide appeals from decisions made by the Planning Commission concerning subdivisions or subdivision amendments pursuant to the procedures and standards set forth in title 20, "Subdivisions And Condominiums", of this Code; and

5. Hear and decide appeals from administrative decisions made by the planning commission pursuant to the procedures and standards set forth in this title.

C. Qualifications: The appeals hearing officer shall be appointed by the mayor with the advice and consent of the city council. The mayor may appoint more than one appeals hearing officer, but only one appeals hearing officer shall consider and decide upon any matter properly presented for appeals hearing officer review. The appeals hearing officer may serve a maximum of two (2) consecutive full terms of five (5) years each. The appeals hearing officer shall either be law trained or have significant experience with land use laws and the requirements and operations of administrative hearing processes.

D. Conflict Of Interest: The appeals hearing officer shall not participate in any appeal in which the appeals hearing officer has a conflict of interest prohibited by title 2, chapter 2.44 of this code.

E. Removal Of The Appeals Hearing Officer: The appeals hearing officer may be removed by the mayor for violation of this title or any policies and procedures adopted by the planning director following receipt by the mayor of a written complaint filed against the appeals hearing officer. If requested by the appeals hearing officer, the mayor shall provide the appeals hearing officer with a public hearing conducted by a hearing officer appointed by the mayor. (Ord. 7-14, 2014: Ord. 61-12, 2012)

21A.06.050: HISTORIC LANDMARK COMMISSION:

A. General Provisions: The provisions of title 2, chapter 2.07 of this code shall apply to the historic landmark commission except as otherwise set forth in this section.

B. Creation: The historic landmark commission was created pursuant to the enabling authority granted by the historic district act, section 11-18-1 et seq., of the Utah Code Annotated, 1953 (repealed), and continues under the authority of the land use development and management act, Utah code chapter 10-9a.

C. Jurisdiction And Authority: The historic landmark commission shall:

1. Review and approve or deny an application for a certificate of appropriateness pursuant to the provisions of chapter 21A.34 of this title;

2. Participate in public education programs to increase public awareness of the value of historic, architectural and cultural preservation;

3. Review and approve or deny applications for the demolition of structures in the H historic preservation overlay district pursuant to chapter 21A.34 of this title;

4. Recommend to the planning commission the boundaries for the establishment of an H historic preservation overlay district and landmark sites;

5. Make recommendations when requested by the planning commission, the hearing officer or the city council, as appropriate, on applications for zoning amendments and conditional uses involving H historic preservation overlay districts and landmark sites;

6. Review and approve or deny certain modifications to dimensional standards for properties located within an H Historic Preservation Overlay District. This authority is also granted to the planning director or designee for applications within the H Historic Preservation Overlay District that are eligible for administrative approval by the planning director or zoning administrator. The certain modifications to zoning district specific development standards are listed as follows and are in addition to any modification authorized elsewhere in this title:

a. Building wall height;

b. Accessory structure wall height;

c. Accessory structure square footage;

d. Fence height;

e. Overall building and accessory structure height;

f. Signs pursuant to section 21A.46.070 of this title; and

g. Any modification to bulk and lot regulations, except density, of the underlying zoning district where it is found that the proposal complies with the applicable standards identified in section 21A.34.020 and is compatible with the surrounding historic structures.

7. Make recommendations to the planning commission in connection with the preparation of the general plan of the city; and

8. Make recommendations to the City Council on policies and ordinances that may encourage preservation of buildings and related structures of historical and architectural significance.

D. Membership: The Historic Landmark Commission shall consist of not less than seven (7) nor more than eleven (11) voting members appointed in a manner providing balanced geographic, professional, neighborhood and community interests representation. Appointment to a position created by any vacancy shall not be included in the determination of any person's eligibility to serve two (2) consecutive full terms.

E. Qualifications Of Members: Each voting member shall be a resident of the City interested in preservation and knowledgeable about the heritage of the City. Members shall be selected so as to ideally provide representation from the following groups of experts and interested parties whenever a qualified candidate exists:

1. At least two (2) architects, and

2. Citizens at large possessing preservation related experience in archaeology, architecture, architectural history, construction, history, folk studies, law, public history, real estate, real estate appraisal, or urban planning.

F. Meetings: The Historic Landmark Commission shall meet at least once per month or as needed.

G. Commission Action: A simple majority of the voting members present at a meeting at which a quorum is present shall be required for any action taken. The decision of the Historic Landmark Commission shall become effective upon the posting of the record of decision.

H. Public Hearings: The Historic Landmark Commission shall schedule and give public notice of all public hearings pursuant to the provisions of chapter 21A.10 of this title.

I. Removal Of A Member: Any member of the Historic Landmark Commission may be removed by the Mayor for violation of this title or any policies and procedures adopted by the Historic Landmark Commission following receipt by the Mayor of a written complaint filed against the member.

J. Policies And Procedures: The Historic Landmark Commission shall adopt policies and procedures for the conduct of its meetings, the processing of applications and for any other purposes considered necessary for its proper functioning. (Ord. 64-21, 2021: Ord. 56-14, 2014)

21A.06.060: ZONING ADMINISTRATOR:

Primary responsibility for administering and enforcing this title shall be delegated to the planning official. Except as otherwise specifically provided in this title, the Director may designate a staff person or staff persons in the division to carry out these responsibilities. The staff person(s) to whom such administrative and enforcement functions are assigned shall be referred to in this title as the "Zoning Administrator". (Ord. 61-11, 2011)

21A.06.070: DEVELOPMENT REVIEW TEAM (DRT):

The development review team shall consist of a designated representative from all City departments and/or divisions involved in the development review/approval process, including, but not limited to, the Department of Community and Neighborhoods, the Department of Public Services, the Police Department, the Fire Department and the Department of Public Utilities, and shall be responsible for advising the Zoning Administrator in the Zoning Administrator's administration of the site plan review process pursuant to the provisions of chapter 21A.58 of this title. (Ord. 49-16, 2016)

21A.06.080: RESERVED.

21A.06.090: FINES HEARING OFFICER:

A. Creation: The position of fines hearing officer is created pursuant to the enabling authority granted by the Municipal Land Use, Development, and Management Act, Section 10-9a-701 of the Utah Code.

B. Jurisdiction And Authority: The fines hearing officer shall have the powers and duties set forth in Chapter 21A.20 of this title and Subsections 18.48.100.E and 18.48.100.F.

C. Qualifications: The fines hearing officer shall be appointed by the mayor with the advice and consent of the city council. The mayor may appoint more than one fines hearing officer, but only one fines hearing officer shall consider and decide upon any matter properly presented for fines hearing officer review pursuant to Chapter 21A.20 of this title or Subsections 18.48.100.E and 18.48.100.F as the case may be. The fines hearing officer may serve terms of four (4) years each, which may be renewed at the mayor's discretion. The fines hearing officer shall either be law trained or have significant experience with the requirements and operations of administrative hearing processes.

D. Conflict Of Interest: The fines hearing officer shall not participate in any appeal in which the fines hearing officer has a conflict of interest prohibited by Title 2, Chapter 2.44 of this code.

E. Removal of The Fines Hearing Officer: The fines hearing officer may be removed by the mayor for violation of this title, any relevant policies and procedures or any relevant provision of state law following receipt by the mayor of a written complaint filed against the fines hearing officer. If requested by the fines hearing officer, the mayor shall provide the fines hearing officer with a public hearing conducted by a hearing officer appointed by the mayor. (Ord. 53-20, 2020: Ord. 56-18, 2018)

Navigating the Land Use Approval Process

Submitted by Gretta C. Spendlove


SESSION II:
Navigating the Land Use Approval Process
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Determining Where the Decision Authority Lies
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Determining Where the Authority Lies

- LUDMA sets forth the framework for where decision authority lies on Utah land use decisions.
- The major distinctions are between legislative and administrative functions.
- Legislative functions are handled by the legislative body, which is the city council or the county commission, although the planning commission or staff, which are administrative bodies, may make recommendations or preliminary findings.
- Administrative functions may be handled by administrative bodies, including the planning commission and staff.

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3

Determining Where the Authority Lies (cont'd)

- Appeals from administrative decisions typically move to the next highest body (i.e., staff to planning commission) and ultimately to the legislative body (city council or county commission).
- Appeals from the legislative body go to entities designated by ordinance, and then to court.
- Each political subdivision structures its decision-making procedures and bodies slightly differently, so it is imperative to review city or county ordinances.

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Aligning with General Plans

- Utah statutes specify that cities and counties must create general plans.
- According to Utah Code Ann. ("UCA") Section 10-9a-401(1), the plan should include: (a) present and future needs of the municipality, and (b) growth and development of all or any part of the land within the municipality.

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Aligning with General Plans (cont'd)

At a minimum, the general plan, together with accompanying maps, charts, and explanations, must include:

- A land use element that: (a) designates the long-term goals and the proposed extent, general distribution, and location of land for housing, business, industry, agriculture, recreation, education, public buildings and grounds, open space, and other categories of public and private uses of land as appropriate; and (b) may include a statement of the projections for and standards of population density and building intensity recommended for the various land use categories covered by the plan;

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Aligning with General Plans (cont'd)

- A transportation and traffic circulation element consisting of the general location and extent of existing and proposed freeways, arterial and collector streets, mass transit, and any other modes of transportation that the planning commission considers appropriate, all correlated with the population projections and the proposed land use element of the general plan; and
- For cities, an estimate of the need for the development of additional moderate-income housing within the city, and a plan to provide a realistic opportunity to meet estimated needs for additional moderate income housing if long-term projections for land use and development occur.

  UCA Section 10-9a-403 (2)(a).

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Aligning with General Plans (cont'd)

- Government entities normally treat their general plans as advisory and do not require that specific decisions as to particular pieces of land comply exactly with the plan.
- However, if the decisions are inconsistent with the plan, it may be easier to challenge such decisions as arbitrary and capricious, which is the standard for review of administrative planning and zoning decisions.
- It can also be useful to quote from the general plan in arguments about controversial land use decisions.
- An example of a general plan (Utah County 2014) is provided as **Exhibit A**.

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Aligning with Land Use Ordinances

- The Utah legislature has specified that cities and counties may adopt local land use ordinances.
- Such ordinances include planning, zoning, development, and subdivision ordinances. UCA Sections 10-9a-501 and 17-27a-501.
- The general plan is not a land use ordinance, nor are building, fire, and health codes, although they do affect land.

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Aligning with Land Use Ordinances (cont'd)

- Adoption and changes to ordinances, codes, or rules are legislative decisions made by the mayor, city council or county commission.
- The role of the planning commission is to review proposed land use ordinances and make recommendations to the mayor, city council, or county commission before they enact or amend such ordinances.
- In challenging a local rule or ordinance, it may be critical to determine whether proper procedures were followed.

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Aligning with Subdivision Regulations

- Procedures for approving subdivisions vary widely from one jurisdiction to another.
- The first issue usually considered is whether the required density fits within existing zoning. Other issues include:
  - Road and sidewalk standards
  - Public utilities
  - Minimum lot sizes, dimensions, and setbacks
  - Open spaces, trails and other amenities
  - Covenants and restrictions
  - Environmental issues
  - Completion guarantees and bonding
- Sign-offs are required from various governmental agencies.

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Aligning with Restrictive Covenants

Restrictive covenants ("CC&Rs") are restrictions placed by contract on private land. Typically CC&Rs will provide the following:

- Creation of a property owners association ("POA") to regulate the development;
- Reservation of certain rights in the declarant, or developer, such as either complete control or disproportionate voting rights in the POA so long as the declarant owns any property in the development;
- Restrictions on property use within the development, such as minimum size of buildings or restrictions on leasing, presence of animals, or offensive activities;
- Maintenance obligations, whether in the owner or in the POA;

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Aligning with Restrictive Covenants (cont'd)

- Assessments by the POA and remedies for nonpayment;
- Easements for parking, landscaping, and utilities;
- Ownership and use of common areas;
- Enforcement of agreements in the CC&Rs;
- Amendment and duration; and
- Mortgagee rights.

(See **Exhibit B** and **Exhibit C** for examples.)

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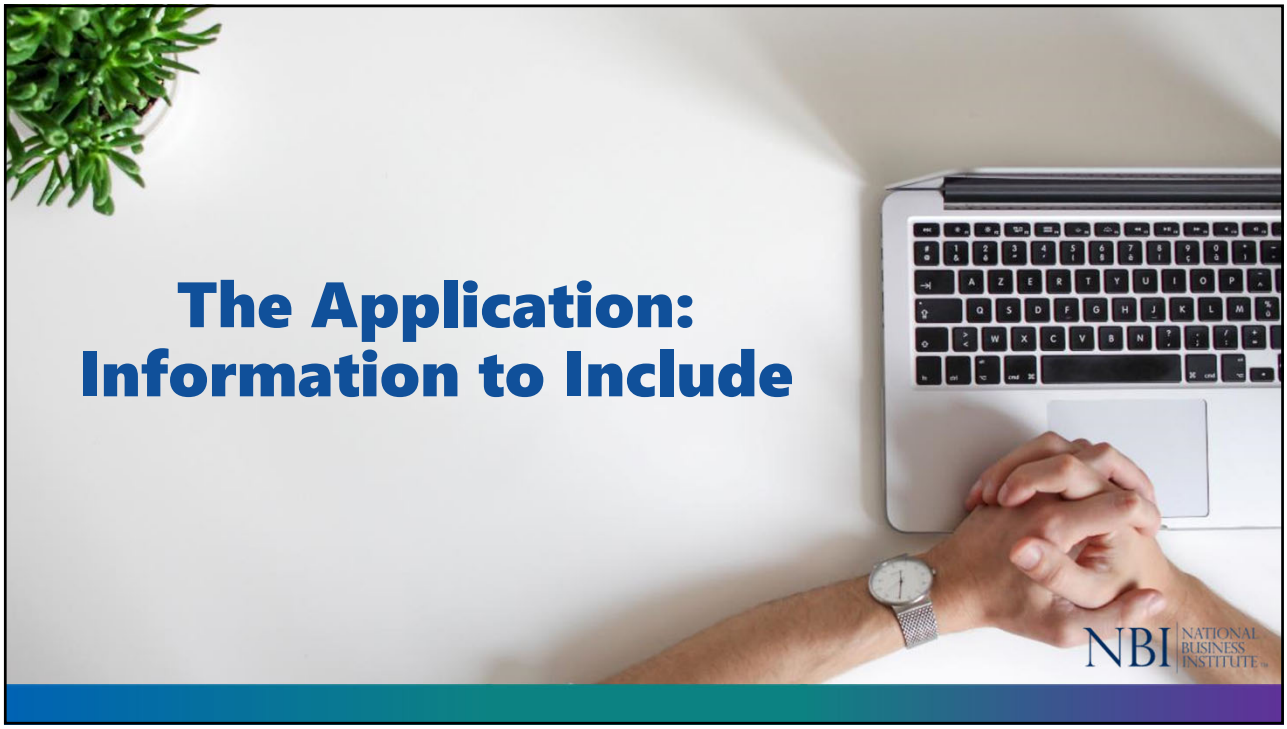

15

Information to Include in the Application

- Applications for different types of approvals are often available online.
- See **Exhibit D** for a list of applications for Salt Lake City.
- **Exhibits E** and **Exhibit F** are examples of applications for zoning amendments and subdivision plat approvals.
- The applicable ordinance generally specifies the information that must be included in the application.
- A snapshot of the table of contents of the subdivision ordinances for Salt Lake City is attached as **Exhibit G**. Ordinances relating to Design Standards, Preliminary Plats, and Final Plats are attached as **Exhibits H, I, and J**, respectively.

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Information to Include in the Application (cont'd)

- Prior to submitting an application, schedule a meeting with a member of the planning staff to discuss the procedure and information that will be necessary.
- Obtaining staff approval can be vital in securing approval of an application, and early and regular communication can help to cement that staff approval.

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The Process

Stages of permitting:

- Application
- Staff review period
- Planning commission review and approval
- Approval by city council or county commission, if required

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What Works when Handling Hearings, Meetings, and Records

- Give yourself plenty of lead time in obtaining land use approvals.
- Get the staff behind you, if at all possible, before the hearing.
- If the decision is controversial, attend community councils, have meetings with community leaders, and make an effort to obtain community approval, or at least gauge community feeling, prior to the hearing.
- Cite to the general plan in the hearing, if it supports you.

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What Works when Handling Hearings, Meetings, and Records

- Be strategic about how you use legal counsel. It may be more effective to have the developer make the presentation at a public hearing, with the lawyer in the background. However, if technical legal issues are paramount, then it may be useful to have the lawyer be more prominent.
- Records requests under GRAMA (Government Records Management Act) can be effective in obtaining necessary documents.
- Do a cost/benefit analysis on what decisions to challenge. It may be more cost effective to live with some questionably legal exactions, for instance, rather than to delay the development process with an appeal.

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National Environmental Policy Act (NEPA)

- The National Environmental Policy Act ("NEPA") requires that the federal government consider the environmental impact of any major act it takes that may affect the environment in a significant manner.
- Federal projects that trigger NEPA include such things as construction of airports, military bases, highways, and parks.
- Before approving a project that falls under NEPA, the government is required to undertake an environmental assessment.

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Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)

- CERCLA was enacted to clean up land that has been contaminated with hazardous or toxic substances.
- The contaminated areas are commonly referred to as "superfund sites."
- CERCLA also imposes liability on some responsible private parties involved with contaminated properties by requiring them to pay to clean up the mess.
- Purchasers of property should carefully inspect properties for environmental issues, especially if the property was used for commercial or industrial purposes, such as a factory or gas station.

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National Historic Preservation Act (NHPA)

- NHPA created a National Register of Historic Places, which is a list of properties that have been determined to be of historical significance.
- Privately owned properties are eligible for inclusion on the list, such as an old hotel converted to a private home.
- Projects that alter a property on the register are reviewed before the alterations are made to determine if the project may adversely affect the historical property.

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Clean Air Act

- The Clean Air Act regulates air emissions from various sources.
- The Environmental Protection Agency ("EPA") ensures compliance with the Act.

26

Clean Water Act

The Clean Water Act makes it unlawful for any person to discharge any pollutant from a source point into navigable waters of the United States unless they have obtained a special permit allowing such activity from the EPA.

27

Endangered Species Act

- The U.S. Fish and Wildlife Service of the Department of the Interior maintains a list of over 600 endangered plant and animal species, and almost 200 threatened species.
- Under the Endangered Species Act, anyone can petition to prohibit activities that may have an adverse effect on either endangered or threatened species.

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Resource Conservation and Recover Act (RCRA)

- The Resource Conservation and Recovery Act ("RCRA") allows the EPA to control the generation, transportation, treatment, storage, and disposal of hazardous waste.
- RCRA also contains provisions for the management of nonhazardous solid wastes.
- RCRA complements CERCLA, and the two together provide mechanisms for controlling all hazardous waste situations.
- While RCRA focuses on active and future facilities, CERCLA deals with abandoned or historical sites and emergency situations.

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Safe Drinking Water Act (SDWA)

- Under SDWA, the EPA is authorized to establish purity standards for both aboveground and underground sources of water either designated for, or potentially designated for, human consumption.
- SDWA contains both health-related standards and nuisance-related standards. Both are enforced with the cooperation of state governments.

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Toxic Substances Control Act (TSCA)

- The Toxic Substances Control Act ("TSCA") allows for the testing, regulation, and screening of all chemicals produced or imported into the U.S. before they reach the consumer market place.
- TSCA also allows for the tracking of all existing chemicals that pose health or environmental hazards and for the implementation of cleanup procedures in the case of toxic material contamination.
- TSCA supplements other federal laws, such as the Clean Air Act and the Toxic Release Inventory under EPCRA.

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Wetlands Legislation

- Section 404 of the Clean Water Act is the primary vehicle for federal regulation of activities that occur in wetlands.
- Inland wetlands are more vulnerable than coastal wetlands to degradation or loss, because laws and regulations give them less comprehensive protection.
- The Army Corps of Engineers and EPA share authority for reviewing wetlands permit applications and enforcing violations.

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Open Meeting Laws

- Utah has adopted an open meeting law that must be followed by all political subdivisions. A copy of the current law is attached as **Exhibit K**.
- The law basically covers the following:
  - What is the definition of a "meeting" to which open meeting laws apply?
  - What public notice must be given of the meeting?
  - In what instances may the meeting be "closed" to discuss certain sensitive matters?
  - What records must be kept of closed meetings?

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GRETTA C. SPENDLOVE

ABOUT ME

- Shareholder, Board of Directors

  DENTONS DURHAM JONES PINEGAR P.C.
  111 S. Main Street, Suite 2400
  Salt Lake City, UT 84111
- Ranked in Chambers USA (2019-2021)
- **Practice Areas:** Real Estate
  Business & Finance,
  Intellectual Property

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UTAH LAND USE AND ZONING FROM START TO FINISH

Session II:

Navigating the Land Use Approval Process

Gretta C. Spendlove
Dentons Durham Jones Pinegar P.C.
111 S. Main Street, Suite 2400
Salt Lake City, Utah 84111
(801) 415-3000
gretta.spendlove@dentons.com

A. DETERMINING WHERE THE DECISION AUTHORITY LIES

As is discussed in Session I, LUDMA sets forth the framework for where decision authority lies on Utah land use decisions. The major distinctions are between legislative and administrative functions. Legislative functions are handled by the legislative body, which is the city council or the county commission, although the planning commission or staff, which are administrative bodies, may make recommendations or preliminary findings. Administrative functions may be handled by administrative bodies, including the planning commission and staff.

Appeals from administrative decisions typically move to the next highest body (i.e., staff to planning commission) and ultimately to the legislative body (city council or county commission). Appeals from the legislative body go to entities designated by ordinance, and then to court.

Within the general framework of LUDMA, each political subdivision structures its decision-making procedures and bodies slightly differently, so it is

imperative to review city or county ordinances at every stage of obtaining land use approvals.

B. ALIGNING WITH COMPREHENSIVE PLANS, SUBDIVISION REGULATIONS, ETC.

Each political subdivision has a web of land use ordinances and plans, which are required by LUDMA and/or have developed over years of decision making. In obtaining approvals, it is important to step back and take a broad look at where the requested approval will fit into the general plan developed by the city or county, as well as other regulations the city or county has adopted.

1. General Plans. Utah statutes specify that cities and counties must create general plans. According to Utah Code Ann. ("UCA") Section 10-9a-401(1), the plan should include: (a) present and future needs of the municipality, and (b) growth and development of all or any part of the land within the municipality. Also see UCA Section 17-27a-401(2) (counties). More specifically, as set forth in UCA Section 10-9a-401(2), the plan may describe:

(a) health, general welfare, safety, energy conservation, transportation, prosperity, civic activities, aesthetics, and recreational, educational, and cultural opportunities;
(b) the reduction of the waste of physical, financial, or human resources that result from either excessive congestion or excessive scattering of population;
(c) the efficient and economical use, conservation, and production of the supply of:
    (i) food and water; and
    (ii) drainage, sanitary, and other facilities and resources;
(d) the use of energy conservation and solar and renewable energy resources;
(e) the protection of urban development;
(f) the protection or promotion of moderate income housing;
(g) the protection and promotion of air quality;
(h) historic preservation;

(i) identifying future uses of land that are likely to require an expansion or significant modification of services or facilities provided by each affected entity; and
(j) an official map

The city has discretion as to the comprehensiveness of the plan, but, at a minimum, the general plan, together with accompanying maps, charts, and explanations, must include:

a. A land use element that: (a) designates the long-term goals and the proposed extent, general distribution, and location of land for housing, business, industry, agriculture, recreation, education, public buildings and grounds, open space, and other categories of public and private uses of land as appropriate; and (b) may include a statement of the projections for and standards of population density and building intensity recommended for the various land use categories covered by the plan;

b. A transportation and traffic circulation element consisting of the general location and extent of existing and proposed freeways, arterial and collector streets, mass transit, and any other modes of transportation that the planning commission considers appropriate, all correlated with the population projections and the proposed land use element of the general plan; and

c. For cities, an estimate of the need for the development of additional moderate-income housing within the city, and a plan to provide a realistic opportunity to meet estimated needs for additional moderate income housing if long-term projections for land use and development occur.
UCA Section 10-9a-403 (2)(a).

A copy of the 2014 Utah County general plan is attached as **Exhibit A**.

Two statutes govern the effect of a general plan. UCA Section 10-9a-405 states:

> Except as provided in Section 10-9a-406, the general plan is an advisory guide for land use decisions, the impact of which shall be determined by ordinance.

UCA Section 10-9a-406 states:

> After the legislative body has adopted a general plan, no street, park, or other public way, ground, place, or space, no publicly owned building or structure, and no public utility, whether publicly or privately owned, may be constructed or authorized until and unless it conforms to the current general plan.

Government entities normally treat their general plans as advisory and do not require that specific decisions as to particular pieces of land comply exactly with the plan. However, if the decisions are inconsistent with the plan, it may be easier to challenge such decisions as arbitrary and capricious, which is the standard for review of administrative planning and zoning decisions. It can also be useful to quote from the general plan in arguments about controversial land use decisions.

The planning commission is the entity that proposes a general plan, which is then submitted to the executive body of the governmental entity, whether that is a mayor, city council, or county commission. The executive body cannot approve a general plan without the recommendation of the planning commission. UCA Sections 10-9a302(1) and 403(1)(a), and UCA 17-27-a-302(a)(a).

The statute specifies procedures for adoption of general plans, including at least one public hearing and open discussion. Community views are sought in adopting the general plan. UCA Sections 10-9a-404 and §17-27a-404.

2. Land Use Ordinances. The Utah legislature has also specified that cities and counties may adopt local land use ordinances. Such ordinances include planning, zoning, development, and subdivision ordinances. UCA Sections 10-9a-501 and 17-27a-501. The general plan is not a land use ordinance, nor are building, fire, and health codes, although they do affect land.

Adoption and changes to ordinances, codes, or rules are legislative decisions made by the mayor, city council or county commission. The role of the planning commission is to review proposed land use ordinances and make recommendations to the mayor, city council, or county commission before they enact or amend such ordinances.

In challenging a local rule or ordinance, it may be critical to determine whether proper procedures were followed. Typically, such procedures include notice and a hearing, as specified by UCA Sections 10-9a-205 and 17-27a-205. The notice required for applicants is set forth in UCA Section 10-9a-202, which states:

> (1) For each land use application, the municipality shall:
> (a) notify the applicant of the date, time, and place of each public hearing and public meeting to consider the application;
> (b) provide to each applicant a copy of each staff report regarding the applicant or the pending application at least three business days before the public hearing or public meeting; and
> (c) notify the applicant of any final action on a pending application.
> (2) If a municipality fails to comply with the requirements of Subsection (1)(a) or (b) or both, an applicant may waive the failure so that the application may stay on the public hearing or public meeting agenda and be considered as if the requirements had been met.

The state statute does not require that notice be sent to adjacent landowners of land use decisions. Many cities and counties also do not require that notice be sent individually to adjacent landowners. They only require that

notice be provided through postings and publishing in the local newspaper. UCA Sections 10-9a-206 and 17-27a-206.

3. Subdivision Regulations. Procedures for approving subdivisions vary widely from one jurisdiction to another, so it is important to check the subdivision ordinances of the city or county in which the subdivision will be located. The first issue that is usually considered is whether the density which is required will fit within the existing zoning. See discussion below of Interplay of Zoning and Subdivision. Once the density issue is resolved, the planning staff, and then the planning commission, consider a myriad of issues, such as:

- Road and sidewalk standards
- Public utilities
- Minimum lot sizes, dimensions, and setbacks
- Open spaces, trails and other amenities
- Covenants and restrictions
- Environmental issues
- Completion guarantees and bonding

Sign-offs may be required by various local and even national agencies, such as the fire department, health department, local utilities, and even the federal Corps of Engineers.

4. Restrictive Covenants. Restrictive covenants are restrictions placed by contract on private land. Developers who buy tracts of land for development as commercial or residential subdivisions often prepare and record "CC&Rs" or Declarations of Covenants, Conditions, and Restrictions against the tracts of land. Typically CC&Rs will provide the following:

- Creation of a property owners association ("POA") to regulate the development;
- Reservation of certain rights in the declarant, or developer, such as either complete control or disproportionate voting rights in the POA so long as the declarant owns any property in the development;

- Restrictions on property use within the development, such as minimum size of buildings or restrictions on leasing, presence of animals, or offensive activities;
- Maintenance obligations, whether in the owner or in the POA;
- Assessments by the POA and remedies for nonpayment;
- Easements for parking, landscaping, and utilities;
- Ownership and use of common areas;
- Enforcement of agreements in the CC&Rs;
- Amendment and duration; and
- Mortgagee rights.

An example of CC&Rs for a townhouse planned unit development is attached as Exhibit B.

Restrictive Covenants may also be included in agreements between developers and the purchasers to whom they sell property. For instance, if a developer is selling property for a hotel within a commercial development, or near property for which the developer retains ownership, the developer may impose additional restrictions on the property on which the hotel will be built. The restrictions may include the following:

- Specific use restrictions, such as that the property must be used for a particular size, quality, or brand of hotel;
- Approval rights over the design of the hotel;
- Covenants of continuous use as a hotel;
- Covenants of completion of the hotel by a certain date; and
- Enforcement provisions, such as first right of refusal, repurchase, liquidated damages, or injunction.

An example of an Agreement of Restrictive Covenants is attached as Exhibit C.

C. THE APPLICATION: COMPLETE CHECKLIST OF INFORMATION TO INCLUDE

Applications for different types of approvals are often available online. For example, the Applications portal for the Salt Lake City Planning Office, found at https://www.slc.gov/planning/applications/, provides detailed information about the steps involved in the planning and application process for various types of projects, including details about pre-application meetings, how to file applications, information about public hearings, steps in the approval process, and information about building permits and codes. A list the applications provided through the planning portal for Salt Lake City is provided on **Exhibit D**. The online applications for zoning amendments and subdivision plat approvals for Salt Lake City are attached as **Exhibit E** and **Exhibit F**, respectively.

It can often be useful to schedule a meeting with a member of the planning staff, prior to submitting an application, to discuss the procedure and information that will be necessary. Obtaining staff approval can be vital in securing approval of an application, and early and regular communication can help to cement that staff approval. Additionally, the applicable ordinance generally specifies the information that must be included in the application. Ordinances governing subdivision approvals for Salt Lake City can be found at https://codelibrary.amlegal.com/codes/saltlakecityut/latest/saltlakecity_ut/0-0-0-62674. A snapshot of the table of contents of the ordinances is attached as **Exhibit G**. Ordinances relating to Design Standards, Preliminary Plats, and Final Plats are attached as **Exhibits H, I, and J**, respectively.

D. THE PERMITTING PROCESS WALKTHROUGH

1. **The Process**. The applicable ordinance typically specifies the permitting process for a particular type of approval. Usually, the permitting

process includes an initial staff review period, during which the applicant submits various types of information, in addition to the initial application, and obtains approvals from various branches of the city or county administration.
For instance, for a subdivision to be approved, there may need to be approvals relating to transportation, utilities, and environmental decision makers, as well as a survey and plat map. The applicant may have to revise its initial plans numerous times in response to staff questions and comments.

The second stage of permitting is planning commission review and approval. The applicant appears at a hearing with its experts and makes a presentation to the commission. Typically, the planning commission will already have been briefed by staff and may even have toured the subject property. Sometimes public comment is allowed at the initial presentation, but more often a separate public hearing is scheduled. The planning commission then makes its decision.

Depending on the type of approval being sought, the planning commission may be able to make the ultimate decision, or may simply make a recommendation to the city council or county commission, which schedules another time for the applicant to make a presentation and for public comment to be heard.

2. What Works when Handling Hearings, Meetings, and Records.

a. Give yourself plenty of lead time in obtaining land use approvals. They usually take longer than expected and you can make more effective presentations if you have given yourself ample opportunity to assemble information and to muster staff and community support.

b. Get the staff behind you if at all possible before the hearing. The staff makes a recommendation on each land use application. Your chances

of approval are much better if the application is presented to the planning commission, city council, or county commission as being approved by the staff.

c. If the decision is controversial, attend community councils, have meetings with community leaders, and make an effort to obtain community approval, or at least gauge community feeling, prior to the hearing. You can react more effectively to community objections at the hearing if you are aware in advance of what the concerns are.

d. Cite to the general plan in the hearing, if it supports you.

e. Be strategic about how you use legal counsel. It may be more effective to have the developer make the presentation at a public hearing, with the lawyer in the background. However, if technical legal issues are paramount, then it may be useful to have the lawyer be more prominent.

f. Records requests under GRAMA (Government Records Management Act) can be effective in obtaining necessary documents.

g. Do a cost/benefit analysis on what decisions to challenge. It may be more cost effective to live with some questionably legal exactions, for instance, rather than to delay the development process with an appeal.

E. FOLLOWING THE ENVIRONMENTAL REVIEW PROCESS

Many federal laws govern impacts on the environment. A number of those federal laws are, however, administered by state authorities, including the Utah Department of Environmental Quality. As part of the land use approval process, city and county staff may not only have their own staff review environmental impacts of the project but may also require the applicant to obtain environmental audits from third-party auditing companies for city and/or county review. They may also require that the applicant obtain approval from state and

federal agencies, including the Utah Department of Environmental Quality, or from the federal Corps of Engineers, if wetlands may be at issue. In some instances, a federal environmental impact statement may be required, which could delay the project for months or even years.

The following are is a partial list of the many federal environmental laws and programs that create restrictions on land use.

1. NEPA. The federal government not only polices how private parties use real estate but also polices itself. The National Environmental Policy Act ("NEPA") requires that the federal government consider the environmental impact of any major act it takes that may affect the environment in a significant manner. According to the Environmental Protection Agency ("EPA"), federal projects that trigger NEPA include such things as construction of airports, military bases, highways, and parks. Before approving a project that falls under NEPA, the government is required to undertake an environmental assessment. An Environmental Impact Statement ("EIS"), which discloses any possible environmental impacts of the proposed project, such as the impact a new highway may have on the habitat of an endangered species, is prepared during the environmental assessment.

2. CERCLA. Another federal law related to land use is the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), also known as the "superfund." CERCLA was enacted by Congress to clean up land that has been contaminated with hazardous or toxic substances. The contaminated areas are commonly referred to as "superfund sites." CERCLA also imposes liability on some responsible private parties involved with properties that are contaminated by requiring them to pay to clean up the mess.

Responsible parties may include current owners of the property, past owners of the property, arrangers who arranged for disposal of the toxic substances on the property, and transporters who transported the toxic materials to the property. A responsible party can include a current owner of the property who played no part in causing the contamination. It is thus important for purchasers of property to carefully inspect properties for environmental issues, especially if the property was used for commercial or industrial purposes, such as a factory or gas station.

3. NHPA. The National Historic Preservation Act of 1966 ("NHPA") protects historical buildings. NHPA created a National Register of Historic Places, which is a list of properties that have been determined to be of historical significance. As of 2015, there were more than 90,000 properties on the register. Privately owned properties are eligible for inclusion on the list, such as an old hotel converted to a private home. Projects that alter a property on the register are reviewed before the alterations are made to determine if the project may have an adverse effect on the historical property. Examples of adverse effects include such things as physical destruction or damage, relocation, change in use, and adding historically incompatible elements. This process is known as the Section 106 review. Each state has a State Historic Preservation Officer (SHPO) who works with federal agencies and property owners during the process.

4. Clean Air Act. The Clean Air Act regulates air emissions from various sources. The EPA ensures compliance with the Act.

5. Clean Water Act. The Clean Water Act makes it unlawful for any person to discharge any pollutant from a source point into navigable waters of the United States unless they have obtained a special permit allowing such activity from the EPA. Ten years after its enactment, the Clean Water Act was

amended to include provisions that focused on toxic pollutants, authorized citizen suits (as opposed to just government enforcement actions), and funded sewage treatment plants.

6. **Endangered Species Act.** The Endangered Species Act protects threatened or endangered plants, animals, and animal habitats. Many species of plants and animals are in danger of extinction due to the impact of humans and pollutants, irritants, and toxins released into their environments. The U.S. Fish and Wildlife Service of the Department of the Interior maintains a list of over 600 endangered plant and animal species, and almost 200 threatened species. Under the Endangered Species Act, anyone can petition to prohibit activities that may have an adverse effect on either endangered or threatened species. Development projects in southern Nevada were delayed until special accommodations were made to protect the desert tortoise.

7. **Resource Conservation and Recovery Act.** The Resource Conservation and Recovery Act ("RCRA") allows the EPA to control the generation, transportation, treatment, storage, and disposal of hazardous waste. RCRA also contains provisions for the management of nonhazardous solid wastes. RCRA complements CERCLA, and the two together provide mechanisms for controlling all hazardous waste situations. While RCRA focuses on active and future facilities, CERCLA deals with abandoned or historical sites and emergency situations.

8. **Safe Drinking Water Act.** The Safe Drinking Water Act ("SDWA") addresses issues relating to the quality and safety of drinking water in the United States. Under SDWA, the EPA is authorized to establish purity standards for both aboveground and underground sources of water either designated for, or potentially designated for, human consumption. SDWA contains both health-

related standards and nuisance-related standards. Both are enforced with the cooperation of state governments.

9. **Toxic Substances Control Act.** The Toxic Substances Control Act ("TSCA") allows for the testing, regulation, and screening of all chemicals produced or imported into the U.S. before they reach the consumer market place. TSCA also allows for the tracking of all existing chemicals that pose health or environmental hazards and for the implementation of cleanup procedures in the case of toxic material contamination. TSCA supplements other federal laws, such as the Clean Air Act and the Toxic Release Inventory under EPCRA.

10. **Wetlands Legislation.** Section 404 of the Clean Water Act is the primary vehicle for federal regulation of activities that occur in wetlands. Inland wetlands are more vulnerable than coastal wetlands to degradation or loss, because laws and regulations give them less comprehensive protection. The Army Corps of Engineers and EPA share authority for reviewing wetlands permit applications and enforcing violations.

11. **Open Meeting Laws.** Utah has adopted an open meeting law that must be followed by all political subdivisions. A copy of the current law is attached as **Exhibit K**. The law basically covers the following:

- What is the definition of a "meeting" to which open meeting laws apply?
- What public notice must be given of the meeting?
- In what instances may the meeting be "closed" to discuss certain sensitive matters?
- What records must be kept of closed meetings?

EXHIBIT A

UTAH COUNTY GENERAL PLAN (2014)

[Attached]

UTAH COUNTY GENERAL PLAN

2014

UTAH COUNTY GENERAL PLAN
2014

TABLE OF CONTENTS

Prepared by the Utah County Community Development Department
and recommended by the Utah County Planning Commission

Adopted by The County Legislative Body of Utah County, Utah
on: October 17, 2006
by Ordinance No. 2006 - 33
Amended on: March 20, 2007
by Ordinance No. 2007-08
Amended on: March 3, 2009
by Ordinance No. 2009-9
Amended on: December 2, 2014
by Ordinance No. 2014-12

Title Page and Introduction Photos Courtesy of Diane Garcia

INTRODUCTION

The first evidence of a planning policy or forerunner of a general plan was adopted by the Utah County Planning Commission on May 19, 1942. That policy stated that all residential building in the unincorporated areas of the county be discouraged unless evidence was shown that public utilities and sanitary facilities were adequate, and that no commercial zones be created within subdivisions.

A county-wide zoning ordinance was completed and adopted by the Utah County Board of Commissioners in December, 1942. Utah County was one of the few counties in the United States to be completely zoned at that time.

The first formal plan for Utah County came with the adoption of "A Master Plan for Utah County, Utah" in 1968. Utah Code Annotated, 1953, Title 17-27-5, enabled the county to produce the "master plan" document. A resolution was also passed and adopted by both the Planning Commission and the Board of County Commissioners on January 16, 1970, which resolved that lands that lie within city and town boundaries be utilized first for development where the facilities for commercial and residential development are available. This policy is still maintained in the current county planning process.

The next update of the master plan came in 1980 with the adoption of the "Utah County Master Plan, 1980." The policy section of this plan bolstered the resolution of 1970 by defining the "satellite-greenbelt" form of development:

> "The elements of locational preferences for urban uses such as businesses and dwellings is, first, in already established municipalities where water, sewer, and other necessary services are already available or where they can be provided at the least cost; second, in areas lying adjacent to municipalities where the necessary facilities and services can be extended most conveniently and at the least cost; third, in already established unincorporated communities where central water systems have been installed and where the dwellings are close enough together to make it economically feasible for the services; fourth, in already established unincorporated communities where central water systems have not been installed, but where urban development has taken place to such an extent that the prohibition of further non-urban development would be impractical; fifth, in new towns where roads, water and sewer lines, and other community services can be furnished by developers or by residents themselves without cost to other taxpayers."

During the 1990's, the Planning Commission spent many months in special meetings, committee meetings and public hearings to present an updated General Plan for Utah County. This document was approved by the Utah County Planning Commission and forwarded to the

Utah County Commission for their review and adoption. The Goals, Objectives and Policy chapter and Moderate Income Housing chapter of that plan were adopted.

The State Land Use and Development Act for counties states that each county shall prepare and adopt a comprehensive, long-range general plan for present and future growth and development needs of the unincorporated portions of the county. The plan may include any number of sections concerning the development of the county, but at a minimum is mandated to include a land use element, a transportation and traffic circulation element and an element for the development of moderate income housing.

This general plan is an advisory guide for land use decisions that may be implemented through the Utah County Land Use Ordinance and other adopted county codes and ordinances.

UTAH COUNTY GENERAL PLAN
CHAPTER 1: GOALS, OBJECTIVES & POLICIES ELEMENT

The Goal It is the desire of Utah County citizens, the Utah County Legislative Body, and the Utah County Planning Commission to have a pleasant and progressive county in which people can live and work, without sacrificing the traditional rural atmosphere inherent in the unincorporated areas of the county while protecting the quality of life in the incorporated municipalities and respecting the rights of private property owners. The following are objectives and policies to promote this goal:

Objective 1 Maintain the benefits of the historic satellite-greenbelt form of land use development

Policies

A. Zoning regulations should be designed to promote development within the municipalities, with growth emanating outward from urban areas through the annexation process.
B. Non-farm residences on parcels of less than five acres and commercial and industrial development should not be approved within agricultural zones consisting of prime agricultural and irrigated cropland areas.
C. Intense development should not be approved where full emergency services are absent or are too far distant to be effective.

Objective 2 Encourage residential development in locations that are most feasible for the provision of supporting public facilities

Policies

A. Planning for the residential growth of the county, the priority of location choice is: first, within existing municipalities; second, in unincorporated communities and areas that have an existing water system approved for culinary use and fire suppression with the capacity to provide for additional development; and third, on zoning lots in the unincorporated areas of the county which comply with all applicable requirements for residential use of the underlying zone.
B. The design of roads and public facilities in subdivisions and other large scale developments should be done in a fashion which will compliment future annexation by a municipality or the development pattern of the surrounding properties.

Objective 3 Encourage a pleasant, wholesome neighborhood atmosphere in residential areas

Policies

A. Develop residential areas in a manner that will not result in conflicts with surrounding land uses.
B. Developments should provide for adequate off-street parking which is conducive to a safe neighborhood atmosphere.
C. Utilities should be located underground in residential developments.

D. Development patterns should incorporate planned transportation corridors, including biking, pedestrian, and other multi-use trail corridors.

Objective 4 Encourage a fair share of affordable housing

Policies

A. The amount of affordable housing provided for in each jurisdiction should be proportionate to the population of lower income households in the entire County area, to the population of each jurisdiction.
B. Affordable housing should be primarily provided in urban areas where public facilities and private services, including public transportation, are in reasonable proximity.

Objective 5 Maintain prime and other agricultural land in active production, and retain the traditional rural nature of the unincorporated county

Policies

A Agriculture is a significant economic utilization of land in unincorporated Utah County and should merit a strong emphasis in land use policies and regulations.
B. Prime agricultural land should be kept in agricultural production or available for agricultural production.
C. Areas served by irrigation systems should be safeguarded from non-farm development and the irrigation infrastructure protected.

Objective 6 Support a variety of methods to preserve agricultural land

Policies

A. Zones should be created which have the sole purpose of protecting and fostering production agriculture.
B. Continue to provide the option for the landowner to apply for an Agriculture Protection Area.
C. The Farmland Assessment Act should be maintained as one method of preserving farm land in Utah County.
D. Private foundations and trusts for agricultural land conservation and open space preservation should be encouraged, including protection of farming in agricultural areas and protection of open space in nonagricultural areas.
E. Consideration should be given to support economically feasible land use alternatives to local and enterprising farm owners to generate supplementary farm income while promoting the preservation of agricultural open space.
F. Zones should be established and maintained that provide land owners in appropriate agricultural areas the ability to transfer development credits to designated residential areas as a method of preserving viable agricultural lands, including the clustering of development units.
G. Consideration should be given to establishing cooperative programs for the transfer of development rights with adjacent municipalities to promote and give incentive to the preservation of agricultural open space near urban areas.

Objective 7 Commercial land use in unincorporated Utah County should only be encouraged to meet the minimum needs of the local community

Policies

A. Additional unincorporated land should not be rezoned for commercial use unless a significant community need is proven and adequate land area is not available in previously established commercial zones or in nearby municipalities.
B. The county should not approve commercial zones or developments in outlying areas which are beyond the reasonable response distance of full emergency services.
C. Commercial uses in the unincorporated area which require monitoring beyond the staffing limitations of the county organizations governing such uses should be discouraged.
D. Neighborhood commercial developments should be limited to those uses beneficial to the local residents.

Objective 8 Develop industrial land uses in unincorporated areas where essential services are available and encourage necessary industrial areas only where the use will not create problems which outweigh the economic and other public benefits brought into the community by industrial growth

Policies

A. Care should be taken to make sure that no new industrial zone or industrial establishment will be harmful to adjacent properties or to the county.
B. Both new mines and new gravel pits and the expansion of "grandfather" mines and gravel pits should be subject to bonding procedures which will ensure that the mines and pits are used in a way that will protect neighboring property values and will ensure that the land is rehabilitated for future use. Bonding procedures should also ensure public roads used as haul routes for truck traffic are maintained and protected from excessive wear and deterioration.

Objective 9 Establish recreational areas for the general public which encourage a sense of community and are pleasant and relaxing

Policies

A. Only parks and recreational facilities that are county-wide or regional in scope should be operated by the County.
B. Utah County government should be part of a multi-jurisdictional cooperative effort to develop and maintain a county-wide recreational trail system which should interconnect major recreation areas and popular trail routes whenever possible.
C. Canyon areas should be designated for recreation use, limiting housing and commercial developments, which will permit full recreational use of the canyon locale and not detract from the natural beauty. Recreation areas should be managed in a manner which will protect water quality, riparian areas and critical wildlife habitat.
D. Additional mountain recreation areas should considered with increased public demand for camping, picnicking, and scenic travel ways.
E. The open space associated with the shoreline of Utah Lake should be protected and

enhanced in order to make the most of the lake's recreational and scenic potential.

F. Use of off-road vehicles and recreational shooting should be accommodated in areas determined to be appropriate for such uses.

Objective 10 Preserve, protect, and make access available to historical sites

Policies

A. Priority should be given to the preservation of historic buildings, roadways, railroad sites, and other historic landmarks.
B. Utah County should establish a county registry or utilize any existing county registry for those important historic sites which are not included on the National Historic Register.
C. A citizens committee should be considered to evaluate and recommend preservation sites for the register, increase public awareness and appreciation, as well as procure donations and grants for preservation, maintenance, and restoration.
D. The grounds around historic buildings and sites should be tied to an extended park site or connected to the county trails system wherever possible.

Objective 11 Assure that essential governmental facilities and services are provided

Policies

A. Each municipality and the county should have a general plan for its respective jurisdiction, and the governmental entities should cooperate to make the physical development consistent across jurisdictional boundaries.
B. The existing fire service interlocal cooperation agreements should be periodically reviewed and updated to compensate for changes occurring in the unincorporated area.
C. The Utah County Health Department provides public health protection countywide and all entities should be contributing to fund this health service.
D. Public facilities which support residential development, should be provided in the cities, not the unincorporated area, in accordance with the policy that development should occur in the cities where services are most efficiently provided.
E. Proposed development should be discouraged where a jurisdictional sewer or water system does not exist.
F. To encourage annexation, water, sewer, and other services should not be provided by municipal governments to property owners in the unincorporated area.
G. Streets, parks, and other public ways, grounds, places, spaces, and public or privately owned utilities and utility corridors, above ground or buried, should be allowed in all areas of the county to provide the needed public uses for growth and development.

Objective 12 Enhance the transportation of people and goods within Utah county with maximum safety, convenience, and economic benefit

Policies

A. All county roads should be classified according to their functional use and in conjunction with their connection to municipal street classifications.
B. A capital improvements program should be developed to upgrade roads to meet the design standards for each classification in order to facilitate more efficient and economical

transportation.

C. All new roads added to the official county road map of Utah County should meet the design standards for its classification at the time it is added, including extension of existing roads.
D. Standards for county road design and developments should be followed as maintained by the Utah County Engineer.
E. Irrigation and open drainage ditches, utility poles and fences, adjoining and parallel to county roads, should be relocated to a location out of the designated clear zone and should also be relocated off the entire right-of-way whenever possible.
F. Utah County should develop policies that encourage commuter and other traffic to utilize existing and any future mass transit systems.
G. Corridors should be identified and acquired for future transportation needs.
H. New structures (and walls) constructed adjacent to planned transportation corridors should be set back consistent with the classification of the planned transportation corridor.
I. Utah county should maintain a trails map which designates existing and future county trails in Utah County. The trail system should follow features which readily lend themselves to trail development, such as the Utah Lake Shoreline, the Bonneville Shoreline, stream courses, old railroad grades, canal corridors, etc., and should interconnect major recreation areas and popular trail routes whenever possible.

Objective 13 Preserve and protect natural resources and open space

Policies

A. All development in the unincorporated area should be designed to conserve natural as resources, including clean air, pure water, riparian areas, wet lands and open space.
B. All disturbance of land due to construction should maintain a protective barrier from natural streams, flood channels, rivers, or bodies of water.
C. To protect areas of sensitive terrain, foliage, water features and wildlife habitat, the county should enforce ordinances prohibiting off-trail travel.
D. The county should encourage recycling of waste materials.

Objective 14 Adopt policies for careful use of water and other natural resources

Policies

A. Protect mountain watersheds that produce the water that forms the basis of growth and development in the county's arid setting.
B. Known water infiltration and recharge areas should be protected from paving and other activities which would inhibit infiltration or cause pollution of the groundwater resource.
C. The irrigation and canal delivery systems of Utah County should efficiently be utilized.
D. Minimum stream flows should be maintained for fishing, boating, and other recreational uses.
E. Development patterns should provide for, and preserve access to, adjacent waterways for flood mitigation and maintenance work, erosion control, and related water control, water management, and water damage mitigation activities.
F. Land development patterns which degrade air quality should be discouraged.

Objective 15 Maintain a tax system which works in tandem with county development policies

Policies

A. County government should not be engaged in the delivery of urban services; existing or new municipal governments should provide long-term comprehensive funding of urban services in places where development occurs.
B. Where feasible, the county should follow a system in which taxation district boundaries are drawn to coincide with zoning district boundaries.
C. The tax rates of the taxation districts should be set to reflect the differences in cost of delivering governmental services to areas where zone districts allow expanded development versus those where zoning minimizes development.

Objective 16 Promote the continued viability of unique regional economic assets such as Camp Williams

Policies

A. Utah County government should collaborate with Camp Williams to integrate reasonable measures into Utah County plans and programs, intended to reduce or avoid conflicts which might threaten the Camp's current or potential future mission.
B. Utah County government should actively engage Camp leadership in an on-going dialogue regarding issues of mutual interest, including, but not limited to, prospective land use developments, infrastructure extensions, land use plan and regulation amendments, and other similar concerns affecting unincorporated lands adjacent to the Camp.
C. Utah County should help educate the greater community concerning the Camp's mission, operations, and contributions to the region through appropriate means, such as providing links on the Utah County website, disseminating materials to be provided by the camp for these purposes, or by other means.
D. Utah County should support land use policies that are consistent with cooperative planning efforts related to Camp Williams and other unique regional economic assets.

UTAH COUNTY GENERAL PLAN
CHAPTER 2: MODERATE INCOME HOUSING ELEMENT

Utah Code Annotated, 1953, as amended, requires each county of the State of Utah to adopt a plan for moderate income housing. After adoption of the plan, the county legislative body with a population of over 25,000 is required to prepare a biennial review and report of its findings.

Moderate Income Housing Element and its implementation

The key policy of the county's general plan is for all types of housing to be directed into the incorporated municipalities that can provide adequate governmental infrastructure, public health, emergency services and private community services. This policy is based on the premise that a valid evaluation of housing quality is not solely a look at the structure itself, but also includes a look at the adequacy of supportive services available to householders. This key policy is still in effect.

Notwithstanding the above policy, the unincorporated area has its certain economic pursuits, such as agriculture, transportation, and mining; each requiring housing to serve those involved. It continues to be a policy of the county to have an appropriate share of its housing to be considered affordable housing.

Programs

Farm Labor Housing. The pre-eminence of agriculture as a land use in the unincorporated area of Utah County is acknowledged. It identifies a need for unincorporated county farm labor housing. This need is for both those farm laborers hired to work year round and those who are hired on a seasonal basis during periods of harvest. The Utah County Land Use Ordinance allows for such housing, requiring the farm owner to be the provider.

On Site Housing for Caretakers of Agriculture and Commercial/Industrial Business Sites. Many of the businesses and industrial establishments in the unincorporated area are relatively remote from police, fire and other essential emergency services. The Moderate Income Housing element proposes that housing for caretaker personnel continue to be made available through the land use ordinance.

Efforts made by Utah County to reduce, mitigate, or eliminate local regulatory barriers to Moderate Income Housing

The two zones best suited to accommodate moderate income housing, the RR-5 and TR-5 zones, contain enough land for 7,356 dwelling units at a rate of two units per acre (although a greater density per acre can be allowed for planned unit developments). The 2010 Census states that the unincorporated portion of Utah County has 3.57 persons per household, down from 3.59 in 2000. That number is projected to remain nearly constant over the next five years. That would mean that these areas could sustain a population of 26,216 people at 3.57 persons per

household. The population for unincorporated Utah County was 10,009 for the year 2010 and is projected to be 28,404 by the year 2020.

The amount of land zoned for housing is not found to be the critical factor which limits moderate income housing. The lack of public facilities and other services needed for development, and the cost of installing or providing such facilities and services, are the more critical factors.

Actions taken by Utah County to encourage the preservation of existing Moderate Income Housing and the development of new Moderate Income Housing

Preservation. Typical housing economies are such that those with higher incomes are the ones who construct new homes; those with modest incomes "move up" to the units vacated by those who have built the new homes; and those with still lower incomes move up to the homes vacated by the second-tier income individuals. New units are seldom available to lower-income households without the availability of government subsidies.

Toward Lower Cost Development. Utah County continues with the following programs which tend to encourage the development of new moderate income housing units:

1. Sponsorship of the Utah County Housing Authority.
2. Policy of having a low property tax rate (which lowers monthly escrow fees for home loans).
3. Policy of having no impact fees.
4. Prohibits by accounting procedures the placement of any portion of the building permit fees into the general funds, cutting the permit fees to a level that meets just the costs of providing the permit and building inspections.
5. Publishes a building permit checklist to speed up the plan approval process.
6. Maintains the zoning and subdivision provisions on-line so developers can eliminate frequent trips to the office for regulatory information thus speeding up the approval process.
7. Policy of single approval, rather than the preliminary and final approval for subdivisions, thus speeding up the approval process.
8. Program of holding pre-application conferences between the developer, the Community Development Department, and other agencies involved in the subdivision plat approval process to eliminate potential delaying conflicts.
9. Provision to not require curb, gutter and sidewalks, and use drainage swales in many situations.
10. Provision for planned unit developments which allow clusters with greater densities than conventional subdivisions and lower land costs per unit.
11. Maintains the county's participation in the national flood insurance program to reduce flood insurance costs to the homeowner.
12. Allow manufactured homes as an alternative to site-built homes.

Projects. The Utah County Housing Authority has a number of on-going projects and programs

to meet the housing needs of low and moderate income people. The areas served include both the incorporated and unincorporated portions of Utah County and involve a Utah County share of federal funding, as well as a municipal share. The projects and programs include:

1. *The Rental Assistance Program* provides rental subsidies to low-income families and elderly people who live in privately-owned housing units throughout Utah County. The family pays no more than 30% of their income to the landlord, and the Utah County Housing Authority pays the balance.
2. *Family Self Sufficiency Program* where financial training and counseling is provided, along with an escrow of the subsidized portion of rent monies. Although in the past the money held in escrow could be used to match Olene Walker Trust Fund money to purchase a residence, the State of Utah no longer permits this.
3. *The Loan-to-Own Program* for the unincorporated area and the municipalities other than Provo and Orem. Home buyers can obtain a government grant of up to $7,000 for money to apply as a down payment on a home mortgage. There is a limit on the purchase price of the home relative to which homes can qualify for this program.
4. *Public Housing Program* provides rental housing to handicapped, disabled and low-income families.
5. *The Willow Cove Project* provides housing for abused women and children.
6. *Home Improvement Loans* provide low interest loans for qualifying households owning homes that need repair.
7. *The Weatherization Assistance Program* provides funding to insulate, caulk, repair windows, install weather strips, repair or replace furnaces, and take other steps to reduce heating costs to lower income households.
8. The Utah County Housing Authority administers *HUD Section 8 rental assistance* to individuals and families at or below 50% of the area median income.
9. The *Carillon Court project* of the Utah County Housing Authority provides 16 elderly housing units in Orem.
10. *The Yarrow Apartments project* provides housing and rental assistance to clients of Wasatch Mental Health.
11. *Sunflower project* of the Utah County Housing Authority provides housing to three low-income severely-handicapped persons in Orem.
12. The *Rural Housing Development Corp*. (RHDC) has constructed 320 homes in Utah County since 1998 for households earning less than 80% of the area median income. This agency has ten homes under construction at one time, with the qualifying families required to contribute a minimum of 65% of the construction hours. Upon completion of the dwelling, families average $22,000.00 of equity with an affordable mortgage.
13. The Utah County Housing Authority has a single family dwelling in Lindon named *Hollow Park*. It provides housing for physically disabled persons.
14. The Utah County Housing Authority completed construction of 13 units of *farm-labor rental housing in Spring Lake*. This facility is designed for families who derive more than 50% of their annual income by working in agriculture. Annual incomes must be below 80% of area median income for eligibility to live there.

15. *Home Rehab Fund* provides for the correction of building code violations and emergency home repairs.
16. *True North, LLC* owns 82 units in Lindon, Orem, Springville, and Spanish Fork.
17. *Rosewood Place* opened in February 2011 in American Fork with 12 ground floor, handicapped, accessible apartments in four-plexes for the elderly.

Progress made within the County to provide Moderate Income Housing, as measured by permits issued for new units of Moderate Income Housing

The need for moderate income housing in the unincorporated area of Utah County in the initial Plan for Moderate Income Housing (as adopted February 16, 1999) was calculated from the 2000 Census and the Mountainland Association of Governments Population Projections. The 2010 Census and Mountainland Association of Governments Population Projections were used for the 2010 forward. The calculations are as follows:

Year	Population
2000	11,164
2005	10,438
2010	10,009
2020	28,404
2030	24,101

The area median income for Utah Valley is $64,200 for 2014, according to the U.S. Department of Housing and Development (HUD[1]). Moderate income households consist of those households who earn 80% or less than the area mean income. This means that any household earning $51,360 or less in 2014 would classify in the moderate income category. Thirty percent of the housing cost should not exceed a households annual income for moderate income housing. A household earning the moderate income figure listed above would qualify for housing in the amount of approximately $205,000. This number was provided by a local mortgage company calculated at current market rates.

Since 1990, the majority of building permits issued for single-family dwellings in the unincorporated area of Utah County have been on lots or parcels having an area of five(5) acres or more. Although these larger lot sizes are more consistent with the goal of the preservation of agricultural lands, they become a prohibitive factor relative to the provision of moderate income housing, due to increasing market value of the land. However, there do exist a number of platted lots of less than five(5) acres in subdivisions with central water systems that more readily provide opportunities for moderate income housing.

Unincorporated Utah County has maintained a percentage of moderate income housing for new single-family structures, due mainly to zoning provisions that allows manufactured homes as an

[1]HUD
http://www.huduser.org

alternative to a site-built structure in any location where a zoning compliance permit for a single family dwelling can be approved.

Utah County's policy continues to be the majority of moderate income housing should be provided in urban and incorporated areas where essential public and private facilities and services, including public transportation, are in reasonable proximity.

Efforts made by the County to coordinate the Moderate Income Housing Element with neighboring counties

Utah County's only ongoing project with neighboring counties relative to moderate income housing is the 13 units of farm-labor housing in Spring Lake, Utah, listed above.

Local county roads, state roads and federal highways adequately serve the rural unincorporated area of Utah County, but the transition through the urban municipalities and along the narrow North-South Wasatch Front corridor impedes the efficient traffic flow into the unincorporated areas and to destinations outside of Utah County. With the Wasatch Mountains to the East and Utah Lake on the West, planning for efficient North-South and East-West routes is made difficult.

Funding and construction of adequate transportation facilities has traditionally struggled to keep pace with the population growth in Utah County. The State Department of Transportation, Mountainland Association of Governments and the Utah County Engineer can only accomplish annual maintenance and new road construction as funding allows. Utah State Code does not currently allow transportation corridors, as identified in a jurisdiction's general plan, to be held as open land for future transportation development without purchase of the proposed corridor.

Major streets The "Transportation Element" map of the Utah County General Plan shows streets and proposed transportation corridors designated as Arterials, Collectors, U.S. Highways, State Routes, and Interstate Highway. All other local county roads are identified on the Official County Road Map for Utah County. Many existing county roads designated as an arterial road or as a collector road do not have as wide a right-of-way or paved surface as is needed to function under these designations. Additional right-of-way should be obtained for the land needed to widen and upgrade the paved surface, shoulders and clear areas of these major roads.

Unincorporated Utah County Major Street Standards and Identification

Arterial Roads

Standards

- Right-of-way width is a minimum of ninety-six (96) feet (right-of-way may be wider on some UDOT roadways); pavement widths may vary based on number of lanes and roadway design, with a minimum pavement width of forty-eight (48) feet and the clear zone of sixteen (16) feet (see arterial standard drawing)
- Through road
- Significant connecting road
- Required turning lanes at intersections
- Primary function is to move traffic
- High speed (speed limits of 40 mph or greater)
- High volume (traffic counts at or above 4,000 vehicles per day)
- Access control (access to the arterial road is fully or partially controlled by Utah County)
- Restricted public parking within the road right-of-way
- Provide pedestrian and bicycle facilities within the road right-of-way

Collector Roads

Standards

- Right-of-way width is a minimum of sixty-six (66) feet (right-of-way may be wider on some UDOT roadways); pavement widths may vary based on number of lanes and roadway design, with a minimum pavement width of thirty (30) feet and clear zone of ten (10) feet (see collector road standard drawing)
- Through road
- Connecting road
- Turning lanes at intersections may be required
- Main function is to move traffic, secondary function is to access abutting land and developments
- High speed (speed limit of 40 mph)
- High volume (traffic counts at or above 2,000 vehicles per day)
- Access control (access to the collector road may be fully or partially controlled by Utah County)
- Limited public parking within the road right-of-way
- Provide pedestrian and bicycle facilities within the road right-of-way

Local County/Development Roads

Standards

- Right-of-way width is fifty-six (56) feet, pavement width is twenty-four (24) feet and clear zone is ten (10) feet (see development road standard drawing)
- Primary function is to provide access to property
- Lower speed (speed limit less than 40 mph)
- Lower volume (traffic counts less than 2,000 vehicles per day)
- Access control (access to the local county/development roads by abutting properties)

Identification

- All county roads on the Official Utah County Road Map unless specified with other designations

Proposed Mobility Routes

Standard

- Mobility routes, as proposed, would connect existing arterial roads and collector roads and be constructed to the major road designation of the existing roads that the mobility route connects.

Utah County has adopted an "Official Utah County Road Map," consisting of nineteen map sheets, that indicate the county roads that can be utilized for development purposes and are maintained by Utah County with surface repair, snow removal, widening, and rebuilding or resurfacing.

Subdivision street design standards

Off site improvements, including curbs, gutters, and sidewalks should be required in subdivisions when the lot area is less than five acres and the width of the lot is less than 150 feet,

unless the County Engineer finds that a modified standard will provide a more efficient means of managing drainage and pedestrian traffic.

Subdivision access roads are those roads leading to a subdivision from the general county road system to give lot owners access to that system. It is the policy of Utah County to not accept dedication of platted subdivision streets if access roads leading to the subdivision are unpaved or are determined by the County Engineer to be inadequate in either paved surface width or geometric design. Access roads should be paved from the nearest paved county road up to and along the entire frontage of the subdivision. This policy exists because once the land is developed the usage of the road has changed from rural to urban. Undeveloped land or agricultural enterprises can operate satisfactorily with seasonal unpaved roads, but year-round subdivision occupancy needs paved all-weather roads for their own access and for access by public safety and fire vehicles.

When arterial or collector roads are used for access to subdivision lots, it is recommended that: (1) lot designs be kept as wide as possible along the frontage of the major street; (2) driveways be designed to allow cars to enter and exit a major street without backing into traffic; (3) all driveways be constructed to intersect the arterial or collector at the same grade or elevation as the street surface for at least the length of one vehicle; (4) driveways should access side streets if possible; (5) adjacent driveways share access when possible.

The Utah County Engineer maintains a book of standards for the development of all designations of county roads and other subdivision improvements. These standards are modified and updated periodically.

Airports The largest airports within Utah County are the Provo airport and the Springville-Spanish Fork Airport. Both of these facilities are continually expanding their air traffic and facilities. There are other military and private airfields, and while they do not produce the commercial travel of those mentioned, the increased commercial use of shared airspace does increase the potential for conflicts. With the increase of population coupled with the increase in business, education and industry, air travel will continue to increase in Utah County. Provo City has made improvements to their airport facility to accommodate expanding commercial air service. The county is aware of the need to provide land use regulations and zone map designations surrounding major commercial and military facilities that will ensure their continued safe and efficient operation.

Railroads/Public Transit A commuter rail system from Box Elder County to Utah County utilizing an existing rail line has been recently implemented. This system links with the existing TRAX lightrail lines in Salt Lake County/City, allowing commuter rail service along the Wasatch Front and within the urbanized municipalities of Salt Lake County.

Utah County should continue to work with the railroads to eliminate dangerous county road surface crossings and to install crossing lights and barriers.

UTA has bus service in Utah County with limited service to the rural unincorporated area. Airport shuttle service and taxi service is also available.

Hiking, Biking and Equestrian Trails With the abundance of Forest Service and Bureau

of Land Management property in Utah County, hiking, biking, equestrian, and multi-use trails have been developed by local government and the Provo-Jordan River Parkway Authority. Utah County should continue to work with other local governments and groups to continue to help in the acquisition of land for the opening of new trail heads and trails, and to maintain their current trails. Trails are available for all county residents and tourists to provide daily travel and recreational access to the canyons, mountains, rivers and lakes of Utah County.

Care should be taken to site and design trails in ways that will limit trespassing and intended encroachments onto private property. In particular, trails in proximity to military facilities such as Camp Williams should be clearly and sufficiently marked with warning signage to avoid serious accidents.

The "Trails" map of the Utah County General Plan designates existing and planned trails county trails in Utah County. County land use policies should compliment existing and planned trail corridors.

UTAH COUNTY GENERAL PLAN
CHAPTER 4: ENVIRONMENTAL ELEMENT

Utah County is a high desert on the eastern edge of the basin and range formation which abuts the north-south aligned Wasatch Mountain range. Sheltered from the more severe storms by the surrounding mountains, Utah County experiences a high desert climate with cold winters which bring the needed annual precipitation to sustain its communities and farming. Protection of this localized environment is critical to provide for the current and future population of Utah County.

Land within the boundary of Utah County is comprised approximately of 60% federal, state, county and city ownership, including the area of Utah Lake, and 40% in private ownership. Much of the federal and state land is located in the higher elevations of the mountains which provides the needed watershed for the expanding city populations and for irrigation of farm land. Preservation of water and water features, maintaining healthy air quality, awareness of natural hazards, wildlife protection and forest conservation, are all important for the residents and visitors of Utah County.

Water

Two major concerns of water in Utah County are sufficiency and quality. The county was settled and developed because it is located at one of the few sites in the arid west where supplies of water are sufficient for agriculture and development. The county has a number of streams that originate in the local mountains, and these are supplemented by water from the Provo River, Current Creek, and Thistle Creek, which originate outside of the county boundary. The local water supply is also augmented by inter-basin transfers from the Weber River and tributaries of the Colorado River.

Utah County obtains irrigation water from Mona Reservoir in Juab County and Strawberry Reservoir in Wasatch County, and both irrigation and culinary water from Deer Creek Reservoir in Wasatch County. The Jordanelle Reservoir in Wasatch County also provides municipal and industrial water to northern Utah County. Utah Lake lies within the county boundary and some local land owners obtain irrigation water from the lake, however, much of the water is used by downstream owners**.** There are a few smaller sized impoundments and natural bodies of water that exist within Utah County which are important for local recreational use and water storage.

Springs and wells from underground water supplies are heavily used for both culinary and irrigation in Utah County. The higher quality of the water and the lack of pumping expenses make springs the preferred source of drinking water systems whenever they are available. Most of the larger springs located in the canyon bottoms and foothill areas of the Wasatch Mountains are currently utilized for culinary water supply. Wells are also used by cities to supply water for culinary use and fire suppression with some cities utilizing wells to supply the water needed beyond the amount that can be supplied by springs. Population growth in Utah County will be dependant on additional wells from underground aquifers since little additional water can be obtained from existing captured spring flows.

Unincorporated county property owners should be encouraged to switch from surface flood irrigation to pressurized pipeline irrigation systems, when possible, to conserve irrigation water. Water conservation efforts should also be encouraged for residential landscaping by using timed systems or grasses, shrubs and plants that require minimum amounts of water.

Underground water and spring flow are recharged primarily from the winter snow accumulation in the high mountain watershed areas. It is vital to Utah County that these areas are preserved. Rainfall also adds to the recharge of groundwater, but the annual volume of water contributed by rainfall precipitation in this arid climate is not enough by itself. Mountain watershed areas also provide the runoff that feed the streams and rivers that flow into Utah Lake and the Great Salt Lake. This stream and river water is used for wildlife, irrigation and recreation. It has been the ability to capture and utilize water that has led to the development of Utah County from its early pioneer farming heritage to its current urban and intensive farming development. Preservation of both quantity and quality are necessary. Utah County relies heavily on the Utah State Engineer to control the water rights assigned to properties, and the Utah County Health Department to monitor water systems and septic facilities, in making their recommendations concerning land use development in the unincorporated area of Utah County.

Air

The same mountain and lake combination that moderates the climate also contributes to the presence of frequent wintertime temperature inversions. Temperature inversions, periods when the coldest air is trapped close to the ground, lock in stagnant air and pollutants which progressively intensify. Inversion periods that produce cold, fog, icy roads, and air pollution can last up to several weeks in Utah County. The layer of hazy pollution associated with the inversions comes from the increasing number of automobiles and their emissions and pollutants from the commercial and industrial uses associated with the growing county population. This layer of haze makes it difficult for sunlight to penetrate to the surface of the ground and resolve the inversion problem by heating the lower layer of air. In such an inversion situation, relief is only available when a weather front moves into the county with enough energy to break the inversion and bring in fresh air and sunlight.

Testing for carbon monoxide, nitrous oxide, ozone, and particulate matter has been in progress for a number of years in Utah County. Historically, the county has exceeded air quality standards for carbon monoxide, and more recently, particulate matter, largely due to heavy automobile use and industrial discharges; and particulate matter, from industry, wood burning stoves, construction disturbance, road dust, diesel engine discharges, agriculture operations, and illegal refuse burning.

Development on five acre lots in the unincorporated area has not had an impact on the ability to attain county air quality compliance, even though commuting is increased from these outlying areas. The carbon monoxide and particulate matter that is added to the air in these outlying areas are well below the maximum allowable levels.

Factors that have led to reduced air pollution levels during favorable weather conditions in Utah County include the lowering of automobile emissions by a vigorous inspection program; the termination of local steel manufacturing; the option to utilize mass transit during commuting

periods; and the restrictions instituted by the State Division of Air Quality on wood burning stoves and fireplaces. The county must continue to monitor, regulate, inspect and find new methods to maintain a healthy quality of air as population, industry, services and vehicles continue to increase.

Natural Hazards

Earthquakes and surface fault rupture The Wasatch Fault is an active fault and geological evidence shows earthquakes have occurred within the last 300 years which have created vertical displacements of 15 to 20 feet in some segments of the fault. Less severe earthquakes have occurred, on average, decennially in Utah County. Surface fault ruptures can damage or destroy buildings and may sever transportation routes and utility and water supply lines, causing additional dangers for fighting fires and restricted mobility of medical and safety personnel.

Ground shaking is the most common hazard associated with earthquakes and exists countywide. In areas with a high water table or near a water feature, ground shaking can cause soils to become temporarily unstable. This temporary condition of soil instability is known as liquefaction. Structures affected by liquefaction may not be shaken apart, but may tilt, sink or actually list over on their side. The State of Utah has adopted certain building codes, which include standards and requirements relative to seismic concerns.

Landslides, rock fall and debris flow Steep sloping ground and an unusual amount of water can result in landslides, mud flows, or debris flows. Certain types of rocks in Utah County, such as the Manning Canyon Shale, have a structural makeup that has a propensity for landslide activity, especially during a period when these soils are saturated from heavy rainfall or snow melt. Debris flows, defined as a mass of mud, rock fragments, soil, and water, moving much like a stream, occur mainly in the cloudburst flood channels of the mountain front. When fire destroys vegetation on the mountain-front, the risk for, and scale of, debris flows may be increased.

Rock fall can occur during an earthquake when exposed rocks on steep slopes are dislodged by ground shaking, or as an individual event when broken free from the mountainside by the freeze-thaw regime of winter climate. In either case, large rocks rolling and bouncing down the slope of the mountainside can be damaging and dangerous to those living near the base of the mountains.

Utah County should maintain maps which identify those areas in unincorporated Utah County with a susceptibility for surface fault rupture, landslide, rockfall and debris flow. No development which includes human-occupied structures and critical facilities such as storage facilities for toxic, caustic, flammable or explosive materials, should occur in those areas identified as having a susceptibility to these hazards unless a geological study(s) is conducted by a qualified professional to identify the degree to which the hazard(s) affects the proposed development and which recommends measures to mitigate the hazard(s). These recommended mitigation measures should be incorporated into the design of the development to adequately

protect persons and property.

Avalanches The deep snow of the upper elevations in the mountains of Utah County often produces avalanches. Many of these avalanches occur in uninhabited areas and only damage vegetation. Back country winter recreationists can also fall victim to these remote avalanches and are often the trigger for the avalanche since it takes very little disturbance to set them in motion. Avalanches usually follow the same paths each year, but exceptional weather conditions in some years produce avalanches so large they exceed their normal chutes. In this situation, the avalanche may strike the lowland areas and cover roads and damage houses. Destructive avalanches have occurred in Hobble Creek Canyon, the Sundance area of the North Fork of Provo Canyon, Vivian Park, Slide Canyon, and Bridal Veil Falls in the main part of Provo Canyon. There is limited avalanche information and data for Utah County. This hazard deserves careful attention. Additional information about avalanches should be sought after to help facilitate more informed decision making regarding development in the mountainous areas of Utah County.

Floods Utah County can experience three types of floods: flash floods, riverine floods, and lakeside floods. Flash floods occur when torrential rain delivers water in an upland area at a volume greater than the soil can absorb, when unusually warm spring weather melts the snow pack too quickly, or when a dam, landslide or other obstruction impounding water gives way.

Riverine floods occur on the natural flood plain as part of the normal process where water from high stream flows are stored outside the river banks until the flow diminishes.

Lake side floods on land surrounding Utah Lake are dependent upon how much water is stored in the winter snow pack, the manipulation of the storage reservoirs upstream and the irrigation releases at the outlet of Utah Lake. Dredging of the Jordan River, the outlet from Utah Lake to the Great Salt Lake, has been used to help reduce flooding along the shoreline of Utah Lake.

The Federal Emergency Management Agency, FEMA, has identified the Utah Lake flood plain and several riverine flood plains in Utah County and requires Utah County government to administer special protective regulations in these areas. The FEMA maps show the areas subject to 1% annual chance floods (100 year floods) and areas subject to 0.2% annual chance floods (500 year floods) and have placed those maps in the office of Utah County Community Development. Development in areas subject to 1% annual chance floods should meet flood-proofing standards to mitigate flooding concerns. Requirements should be established to regulate the location of human occupied structures near flood channels not subject to FEMA regulations.

Wild land fire A large percentage of land area within the boundary of Utah County is rural and mountainous with a variety of fuels vulnerable to wild land fire. Vegetation types range from grasses and brush to heavy scrub and timber. Even with the efforts to eliminate accumulated fuels through clearing and controlled burns, most of these areas have large amounts of fuel which can burn violently when ignited. Homes have also been constructed within these wild land fire areas that complicate fire management and control. Protection of natural resources, life and property, and firefighters and their equipment, has continued to add to the cost

of fire suppression. Besides the immediate danger to life and property and the loss of vegetation, wild land fire can create secondary concerns of erosion, flooding, landslides, debris flows, water quality degradation, displacement of wildlife and livestock, as well as aesthetic impacts. Wild land fires occur each year in Utah County. The number of fires can be reduced by fire safety education and using common sense during periods of high fire danger. The intensity of these fires can vary due to weather conditions and the abundance of fuel.

The Utah County Fire Marshal coordinates fire prevention, suppression, and fire investigation throughout the unincorporated area, while the Wild Land Fire Division of the County Sheriff's Department specifically provides for the prevention and suppression of wild land fires in the unincorporated private lands and cooperates with the state and federal agencies when wild land fires are initiated on public lands or cross over onto such lands. The adoption by Utah County of the International Fire Code and the Urban/Wildland Interface Area section of the Utah County Code has increased the effectiveness of fire prevention and has reduced the risks, costs, and adverse impacts of wild land fire.

Wildlife and Forest Conservation

The tree community in any particular spot of Utah County is a product of climate, soils, land forms, and elevation. Trees constitute the major vegetative type in the county. This is true even though Utah County is a productive agricultural county. The majority are deciduous trees; aspen, maple, and oak, although the tree communities of many cool, north-facing slopes in the county are composed of evergreen fir and spruce. Smaller tree communities found west of the Wasatch Mountains are composed of mostly junipers and pinion pines.

Utah County has few stands that are useful for milling into lumber. Sporadic cuts of deciduous trees, such as cottonwoods, occur to make warehousing pallets, shipping crates, and supports for mine safety. Junipers are often harvested and trimmed to make fence posts. Various woods are utilized for home fireplace heating, and a few softwoods have been cut to supply local sawmills with dimensional lumber**.** However, the most important use of the areas covered by the tree communities in Utah County is as watershed. Inexpensive supplies of culinary and irrigation water are produced in the mountain forests adjacent to Utah County's population and agriculture centers and require very little expense for treatment and transportation.

The forested land also produces a crop of browse used for grazing livestock, forage for game animals, and scenic landscape that is important to the recreationist. The tourists that are drawn to these mountains for their beauty and recreation aspects bring important out-of-county dollars into the county's economy annually.

The extensive oak brush covered slopes of the Traverse Mountains and the foothills of the Wasatch Mountains is a highly fire prone vegetative type. Termed "chaparral" in some studies, the chaparral is also the critical winter habitat for the mule deer population and constitutes the majority of their food source when deep mountain snow force the deer to congregate in these lower elevations. Unlike the forested areas, the high shrub community has no significance for lumber or wood products. Its basic value is for watershed, browse, and scenic qualities.

A variety of animals and fowl live in the habitats of Utah County. Like vegetation, animal and fowl habitat is a result of the surrounding environmental conditions of soil and climate.

Mule deer and elk are the most numerous big game animals in the county**,** and both are avidly pursued by local and out-of-state sportsmen. For both of these species, the size of the population is limited by the quantity and quality of food that can be found in the areas where they winter. Residential development has encroached into these critical deer and elk winter areas resulting in a loss of population as they are driven from their normal winter habitat.

Mountain goat, moose, cougar, bear, and many species of smaller mammals are also found in Utah County. Valley varieties of birds, game birds, raptors, and mountain birds and fowl can be found in Utah County. Golden and Bald Eagle winter nesting sites are plentiful in areas near the shores of Utah Lake. A variety of fish are found in Utah Lake and most all streams, lakes and ponds have native and planted trout. Stretches of the Provo River, through Utah County, are designated as a blue ribbon trout fishery.

Water, air, natural hazards, forest and wildlife, are all environmental elements that must be factored into the planning process. Elimination of any one from land use planning efforts could cause undesired effects to vital resources needed to provide for the many who have chosen to live in Utah County because of these qualities as they presently exist.

The State of Utah Department of Natural Resources, Division of Wildlife Resources, has authority to manage all fish and wildlife in the state, including Utah County. Any species which are considered to be sensitive by the Division of Wildlife Resources shall be given consideration for protection of habitat in planning decisions. Land use and other permits shall be reviewed with this goal in mind, incorporating recommended mitigation and protective measures of adopted state and regional plans. Such strategies shall work towards the goal of ensuring that sensitive species do not become listed as threatened or endangered.

In recognition of the Greater Sage-grouse being identified as needing protection, all state and federally managed lands lying within the Carbon Greater Sage Grouse Management Area shall be managed in accordance with the 2013 State of Utah *Conservation Plan for Greater Sage-grouse in Utah*. On private, local government, and School and Institutional Trust Lands Administration (SITLA) lands, compliance with this plan is recommended.

UTAH COUNTY GENERAL PLAN
CHAPTER 5: LAND USE ELEMENT

The word "planning," when used by a city or county government, means the process of logically arranging physical development, both public and private, to coordinate residential, commercial, industrial, agriculture, and open space land uses, with the essential supportive public facilities and services. To initiate planning within its jurisdiction, a local government customarily prepares and adopts a general plan having various elements mandated by state government and additional elements selected by the jurisdiction, to provide for the management of long-range growth and development.

Municipalities In preparing the Utah County Land Use Plan, notice was taken of the existing and permitted land uses in the twenty-six incorporated municipalities within the county. A county is distinct from a city in that it does not actually have the function, as a city does, to accommodate the complete spectrum of activities available to those who reside within it. Municipalities are created to provide urban governmental services essential for urban development and for the protection of public health, safety, and welfare. Counties are recognized as legal subdivisions of the State and thereby function in a supportive role to the incorporated urban places rather than competing with them for control of industrial sites, commercial activities, and residential growth. Counties exist to fill the governmental void that would otherwise exist in the territory lying between cities and towns.

In their role as subdivisions of state government, counties collect the property tax for the state, the school districts, and the cities, as well as act as custodians over court, land, marriage, and other important public records. On the other hand, it is inappropriate for a county to imitate municipal governments by zoning for a full range of urban land uses, with the resulting responsibility of providing a matched set of urban services.

Land uses excluded from the county land use ordinance and the land use element of the general plan, in unincorporated Utah County, were not intended to be exclusions from county residents, but were found to be properly provided for in the incorporated municipalities for those living in both county and city. Those uses of land recommended for inclusion in the land use ordinance of the unincorporated area are the uses deemed valid for a non-urban, unincorporated setting. Inclusion of more intensive uses deemed necessary in unincorporated areas should be considered primarily as permitted conditional uses.

Preparing the land use element plan In the process of determining what uses of land to include in the land use plan of the unincorporated area of Utah County, it is necessary to take into account the historical and current use of the land, the changing economic conditions, geographic and geologic features, transportation routes, slope and vegetation, and population. In reviewing these categories, along with the annexation policies of each jurisdiction, land ownership and other specific land area studies, a planning matrix can be achieved to indicate those areas best suited for future changes to the land use pattern or areas to be maintained with little or limited change.

Agriculture as a land use Because good, level agricultural soil is equally suitable for industrial, residential, and commercial development, the future of agriculture on the valley floor of Utah County is tentative. The decrease in minimum lot size from forty acres to five acres for a dwelling in the agricultural zone has also contributed to larger ranches and farm tracts being broken into smaller parcels which become less productive as an agricultural unit. Agricultural land has provided a local market of fresh fruit, vegetables, eggs and meat, and continues to provide an attractive landscape for recreation, hunting and visual ruralness. The preservation of viable agricultural land can also have collateral benefits, including the minimizing of potential land use conflicts which may otherwise occur if particular farmlands were to be developed.

Unfortunately, the high value placed upon Utah County agriculture for aesthetic reasons is the very thing which threatens the continuation of farming in this area. From the detached vantage point of the urban county resident, the farmland is a magnet that lures residents to resettle amidst the cattle and cornfields. After moving into the agricultural areas, the non-farmer's annoyance at odors, pesticides, dust, pre-dawn tractor and sprayer noise, and run-away irrigation water, creates conflict. The agriculture protection area afforded by state code may provide the protection needed by the farmer for urban encroachment into the production farm areas.

Housing as a land use Residential districts shown on the land use element map are those most suitable for residential use, including the commercial and governmental activities that support such use. Each zone district permits single-family dwellings that meets the minimum area, frontage and width required within each zone. Areas designated as residential on the land use element map are those areas that could be developed for residential use with water systems, sewer systems, and road access, with the support of adjacent municipal services or abutting existing outlying water and/or sewage systems.

Utah County's preference for the location of residential development is, **first** in the established municipalities, **second** in unincorporated communities and areas with existing water systems, and **third,** on zoning lots in the unincorporated areas of the county. It is the historical policy of Utah County, by resolution, that new unincorporated communities, and existing dense settlements in the unincorporated county, proceed toward incorporation as a town as soon as the minimum population to do so is achieved.

When an application to amend the general plan to a residential designation is submitted, an applicant should show all annexation or incorporation possibilities have been exhausted. In addition, a soil report and soil feasibility study on the use of septic systems for the development or amendment should be submitted by the owner/developer based on existing soil studies that have been provided by the Natural Resources Conservation Service or studies completed by a recognized soil engineer.

Commerce as a land use The central business district is the beginning point from which city utilities and services extend outward into the community; the best roads, largest water lines, and major police and fire-fighting equipment are usually located in this area. The large proportion of the community's taxes collected from the central business district is paralleled by the high level of government services provided in the downtown area.

The majority of residents in unincorporated Utah County lives within three miles of one of the many municipal commercial business districts in the county. It is proposed that no new commercial zones be established in the unincorporated area, except: (1) commercial areas in remote, well-spaced locations along state highways for the convenience of the traveling public; (2) in populated unincorporated neighborhood areas to provide convenient commercial uses for the residents of these areas; and (3) within platted recreational resort developments.

Industry as a land use Industry is a term which is applied to a wide variety of economic activities and land uses, and is essential to most communities as a source of jobs and tax revenue. Most industries need good highway access, water and sewer availability, level ground with moderate to heavy load bearing capacity and adequate heating and electrical utilities that exist or are readily available. State adopted and county mandated building codes and fire safety codes limit the type of structures and uses available in the unincorporated county industrial zones when no water supply system is available for the required fire flow. Existing and new industrial zones have not developed in the county due to this lack of infrastructure to meet minimum code requirements.

Many industrial uses are sufficiently offensive that they cannot be located in municipal industrial areas. Other industrial activities, such as mineral reduction or processing plants, need to be located near the site of their associated natural resource extraction operation. In such cases, industrial zones in the unincorporated area may be created. It is recommended that industrial uses not be allowed in the commercial, residential or agricultural zones; or that nonindustrial uses be allowed in the zone designated for specific industrial activities.

Lands used for watersheds The most fundamental land use in the arid west is watershed use which provides the essential water for agriculture, residential and all other land uses**.** Any damage to watershed areas should be rehabilitated, and the critical mountain areas should be managed for flood and fire protection, water conservation and erosion prevention. Valley infiltration areas that recharge the ground water supplies should also be protected from development, pollution, excavation, and surface covering that would reduce infiltration. Development patterns and policies should be consistent with adopted regulations protecting watershed, water sources, and water source protection zone areas.

Since the valley floor areas contribute to the water table, the disposal of human and industrial waste into the soil should be minimized by the utilization of sewage treatment facilities whenever possible. Storm water runoff from development should be required to be disposed of on-site to increase the water table recharge, unless a storm drain or surface drain that is controlled by an agency or jurisdiction is available that would allow for the increase of water runoff to an acceptable body of water or sump.

Public utilities Public streets, parks, or any public way, ground, place or space, publicly owned buildings or structures, and publicly or privately owned utilities are necessary for the continued growth and development within Utah County and within the state. All land use designations and zone map designations should provide for the location of these public uses. In addition, areas should be designated for the location of certain essential, but less-desired public

facilities, such as wastewater treatment plants and waste and waste transfer facilities. These areas should be located close enough to urban areas to meet the needs of the residents of Utah County and to limit transport costs, but still provide enough separation from non-compatible land uses.

General Plan, Land Use Element Plan

Watershed area Lands in the unincorporated area of Utah County that are classified within the CE-1, Critical Environment Zone, typify the canyon and mountain areas of Utah County. The majority of the water necessary for culinary use, irrigation, recreation, natural vegetation and wildlife, is initiated from these CE-1 zoned areas. This is accomplished from winter snow accumulation and absorption of rainfall. Any request to diminish this watershed area by changing this zone designation, should be accompanied by an engineered soil study and report which would indicate the mitigation of the watershed land area being converted to an alternative land use and the ability of the watershed soils to accept in-ground septic systems without incurring pollution to this critical water storage area.

Agriculture area This designation includes those areas within the M&G-1, Mining and Grazing Zone, A-40, Exclusive Agriculture Zone and RA-5, Residential Agricultural Zone. These areas are zoned for land uses relating to the grazing and pasturing of livestock, mining, production agriculture operations and low density residential development. Historically, the previous RA-1 Zone, and the A-1 Zone, and the current RA-5 Zone, have been those areas related to irrigated agriculture. Any additional conversion of land to the RA-5 Zone should include evidence of an existing, historical irrigation system with established irrigated crops, orchard or pasture in production; and not a proposal to do so in the future if the zone map change is approved. Conversion of the RA-5 Zone to the A-40 Zone is encouraged in this agriculture area.

Residential area Land that is within the classification of the CE-2, Critical Environment Zone, RR-5, Rural Residential Zone and TR-5, Transitional Residential Zone, are considered residential. These three zones have been developed residentially in recreational canyon areas, adjacent to municipal boundaries for future annexation and in unincorporated areas where some utilities exist or have been constructed by the developer. New areas of residential designation should not be approved except for the expansion of existing residential zones when roads, central sewer systems, topography, environmental and geologic factors, central water systems and fire protection indicate that such expansion is feasible.

Commercial area These are areas in unincorporated Utah County that are classified within the NC-1, Neighborhood Commercial Zone or the HS-1, Highway Service Zone. As municipalities expand their boundaries into the rural portion of the county, the need for neighborhood commercial activity decreases. Most residents in the unincorporated area of the county are only minutes from city commercial shops and services. Existing neighborhood commercial areas should be maintained only until they no longer serve the population in the surrounding area.

New neighborhood commercial areas should not be established unless the need is required by increased unincorporated population or as part of an approved recreational resort development.

Highway Service commercial areas aid the traveling public. To a lesser extent, these commercial areas also provide outdoor recreation business opportunities, particularly in canyon areas. Any expansion of the existing HS-1 zoned areas or proposals for creating new areas along state roads and highways should be in conjunction with economic data indicating the need for the expansion or the new location and the cost to Utah County to provide the mandated fire and life safety services. The improvements to vehicular travel by automobile and commercial trucking has reduced the necessity for frequent stops between urbanized areas, which decreases the demand for new highway commercial services in the rural parts of the county.

Manufacture area Land that is classified within the I-1, Industrial Zone and the PF, Public Facilities Zone. Existing industrial areas that do not have access to a municipal or private sewage system or water delivery system for fire suppression should be reviewed and, where appropriate, eliminated. Any new manufacturing area should be approved only if sufficient utilities are available to support the industrial or public facility use and annexation into a municipality is not currently possible. As with commercial areas, the municipalities are relied upon to provide the majority of the manufacturing since they also are able to provide the required infrastructure.

Camp Williams Military Compatibility Overlay Area (MCOA) In order to assist in the implementation of the land use and other recommendations of the Joint Land Use Study (JLUS) completed in 2012 for Camp Williams, Utah County should support land use policies that are consistent with the JLUS in areas designated as part of the Study's Military Compatibility Overlay Area (MCOA). Utah County finds that the MCOA's objectives, standards, and requirements are generally consistent with the county's plans and objectives for this unique area, and will compliment and support county efforts to limit development in areas lacking necessary infrastructure, to promote the preservation of viable farmlands and grazing lands, to protect sensitive areas, and to otherwise promote the orderly and efficient development of Utah County.

General Plan, Land Use Element Map

The "Land Use Element" map of the Utah County General Plan illustrates the five areas of the Utah County General Plan, *Land Use Element Plan*. This land use plan and land use map, along with the goals, objectives and policies element; the moderate income housing element; the transportation and traffic circulation element; and the environmental element, and all associated maps; make up the advisory guidelines for the comprehensive development and long-range land use planning for the unincorporated lands of Utah County, Utah.

EXHIBIT B

SAMPLE CC&Rs

[Attached]

When recorded, return to:

_____
_____
_____

Tax Parcel No.: _____

DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS OF
_____, PLANNED UNIT DEVELOPMENT

This DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS of _____, PLANNED UNIT DEVELOPMENT (this "Declaration") is made and entered into as of _____ ___, 2020 by _____, LLC, a Utah limited liability company ("Declarant") for the purpose of establishing a residential planned unit development project known as _____, PLANNED UNIT DEVELOPMENT.

R E C I T A L S

A. Declarant is the owner of certain real property located in _____, _____ County, Utah, which is more particularly described in Exhibit A attached hereto and incorporated herein by this reference (the "Property"). Defined terms used in these Recitals and this Agreement shall have the meanings given in Article 1 below.

B. Declarant intends to create a residential planned unit development on the Property that will be known as "_____, Planned Unit Development" (the "Project"). The Project will consist of _____ (__) Lots upon each of which Declarant intends to construct a Townhome. Each Townhome shall constitute a single-family residence. Notwithstanding anything in this Declaration to the contrary, the Project is a planned unit development and not a cooperative or a condominium project.

C. In connection with the development of the Project, Declarant is recording this Declaration for the mutual benefit of the Owners. Each Owner acquiring a Lot or a Townhome in the Project is taking the same subject to all of the terms and conditions of this Declaration and, by accepting title thereto, agrees to be bound by this Declaration.

D E C L A R A T I O N

Declarant hereby declares that all of the Property described below shall be held, sold, conveyed, and occupied subject to the following covenants, conditions, restrictions, easements, assessments, charges, and liens, and to the Plat recorded concurrently herewith. This Declaration is for the purpose of protecting the value and desirability of the Property and the individual Lots and Units by, among other things, establishing and coordinating architectural styles and using design, landscape, and architectural features to create a pleasing environment. This Declaration shall be construed as covenants of equitable servitude; shall run with the land, and shall be binding on all parties having any right, title, or interest in the Property or any part thereof, their heirs, successors, and assigns; and shall inure to the benefit of each Owner thereof. The above Recitals shall constitute a part of this Declaration and are incorporated herein by this reference.

ARTICLE 1
DEFINITIONS AND CONCEPTS

The following definitions and concepts shall control in this Declaration:

1.1. "Articles" means and refers to the Articles of Incorporation of the Association. The purpose of the Articles is to establish the Association as a nonprofit corporation under Utah law.

1.2. "Association" means the _____ Homeowners Association, a Utah nonprofit corporation, its successors, and assigns.

1.3. "Bylaws" means and refers to the Bylaws of the Association, as the same may be amended, modified, or restated from time to time as permitted in the Articles and Bylaws. The purpose of the Bylaws is to govern the Association's internal affairs, such as (for purposes of example but not limitation) voting, elections and meetings. A copy of the initial Bylaws is attached hereto as Exhibit B.

1.4. "Common Area" means all real property, including the improvements thereto and facilities thereon, which the Association owns, leases, or otherwise holds possessory or use rights in, at any given time, for the common use and enjoyment of the Owners. Common Area may be designated on the Plat or otherwise established as provided for in this Declaration. Initially the Common Area shall include the walkway and yard in the front, as designated on the Plat.

1.5. "Common Expenses" means the actual and estimated expenses incurred, or anticipated to be incurred, by the Association for the general benefit of the Owners, including any reasonable reserve, as the Association may find necessary and appropriate pursuant to the Governing Documents.

1.6. "Community Association Act" means the Utah Community Association Act, Title 57, Chapter 8a of the Utah Code, and any amendments thereto.

1.7. "Declarant" means _____, LLC, a ___ limited liability company, and its successors and assigns.

1.8. "Declarant Control Period" means the period of time during which the Declarant has Class B membership status as provided for herein.

1.9. "Declaration" means this instrument and any amendments, restatements, supplements, or annexations thereto which are recorded in the official records of the _____ County Recorder, State of _____.

1.10. "Governing Documents" means, collectively, this Declaration, the Articles, the Bylaws, and any amendments or supplements to any of the foregoing, and includes any rules, regulations, and resolutions established pursuant to the authority of the Declaration, Articles or Bylaws.

1.11. "Limited Common Areas" means and refers to a portion of the Common Area which has been designed for the primary or exclusive use of a particular Owner or Owners. General, the Limited Common Areas, as a portion of the Common Area, are owned by the Association but reserved for the exclusive use and enjoyment of the Owner or Owners to whose Unit the Limited Common Areas are adjacent or appurtenant. Limited Common Areas may be designated on the Plat or otherwise established as provided for in this Declaration. Limited Common Areas refers to (a) the exteriors of Townhomes,

including roofs and exterior walls, windows, doors and other exterior surfaces and (b) those areas shown, marked or otherwise designated on the Plat as "Limited Common Areas."

1.12. "Lot" means a separately numbered and individually described plot of land shown on the Plat designated as a Lot for private ownership, but explicitly excludes the Common Area and Limited Common Areas.

1.13. "Lot Owner" means the owner of a Lot and is synonymous with the term "Owner" and "Unit Owner."

1.14. "Member" means a member of the Association and is synonymous with the terms "Owner" and "Unit Owner." As used herein and in the Bylaws and Articles, "Member" is used to identify Owners or Unit Owners as members of the Association.

1.15. "Mortgage" means a mortgage, a deed of trust, a deed to secure a debt or any other form of security instrument encumbering title to any Unit.

1.16. "Mortgagee" means and refers to a lender holding a first Mortgage, and includes a beneficiary under a deed of trust.

1.17. "Owner" means the entity, person or group of persons owning fee simple title to any Lot which is within the Property. Regardless of the number of parties participating in ownership of each Lot, the group of those parties shall be treated as one "Owner." The term "Owner" may include purchasers under a real estate purchase contract, provided such purchaser is granted the rights of an "Owner" in such contract, but does not include persons who hold an interest merely as security for the performance of an obligation unless and until title is acquired by foreclosure or similar proceedings. Membership is appurtenant to and may not be separated from Lot ownership.

1.18. "Plat" means the subdivision plat recorded herewith prepared and certified by a Utah Registered Land Surveyor and any amendments or replacements thereof, or additions thereto.

1.19. "Project" means the residential subdivision project known or referred to as "_____, Planned Unit Development" which comprises the entire Property and which is made subject to this Declaration.

1.20. "Property" means the real property which is more fully described in Exhibit A attached hereto and incorporated herein by this reference.

1.21. "Property Insurance" has the meaning given in Section 5.1.

1.22. "Unit" means a single-family dwelling, with or without walls or roofs in common with other single-family dwellings. When the term "Unit" is used, it includes fee title to the Lot on which the Unit is constructed.

1.23. "Unit Owner" means and is synonymous with the term "Owner" and "Lot Owner."

ARTICLE 2
PROPERTY RIGHTS

2.1. **Owner's Acknowledgment; Notice to Purchasers**. By accepting title to any Lot, all Owners are given notice that the use of their Units, Common Area and Limited Common Areas is limited

by the covenants, conditions, restrictions, easements and other provisions in the Governing Documents, as they may be amended, expanded, modified or restated from time to time. Each Owner, by acceptance of a deed, acknowledges and agrees that the use and enjoyment and marketability of his or her Unit can be limited, restricted or otherwise affected by said covenants, conditions, restrictions, easements and other provisions in the Governing Documents. All purchasers of Units are on notice that the Association may have adopted changes to the Governing Documents that might differ from those a purchaser might receive from or have disclosed by the Owner from whom the purchaser is purchasing his or her Unit, including the initial Bylaws attached hereto as Exhibit A. Purchasers are encouraged to obtain copies of the current Governing Documents, which may be obtained from the Association.

2.2. **Units**.

(a) Ownership. Each Unit is owned in fee simple by the Owner, subject to the covenants, conditions, restrictions and easements in this Declaration and other provisions of the Governing Documents.

(b) Activities within Units. No rule shall interfere with the activities carried on within the confines of Units; provided, however, the Association may (i) restrict or prohibit commercial or other activities not normally associated with property that is intended for residential use, (ii) restrict or prohibit any activities that create additional monetary costs for the Association or other Owners, (ii) restrict or prohibit any activities that create a danger to the health or safety of occupants of other Units, (iv) restrict or prohibit any activities that generate excessive noise or traffic, (v) restrict or prohibit any activities that create unsightly conditions visible outside the dwelling, or (vi) restrict or prohibit any activities that create an unreasonable source of annoyance, all as may be determined by the Association.

(c) Household Composition. No rule of the Association shall interfere with the freedom of Owners to determine the composition of their households, except that the Association shall have the power, in its discretion, to require that all occupants be members of a single housekeeping unit and to limit the total number of occupants permitted in each Unit on the basis of the size and facilities of the Unit and its fair use of the Common Area.

(d) Exteriors of Units. The exteriors of Units, including exterior walls and roofs, are hereby designated as Limited Common Areas for purposes of architectural control and regulation of use.

2.3. **Common Area**.

(a) Ownership; Conveyance. Prior to the expiration of the Declarant Control Period, the Declarant will convey fee simple title to the Common Area, including Limited Common Areas which is a portion of the Common Area, to the Association, free and clear of all encumbrances and liens, but subject to this Declaration, and easements and rights-of-way of record. The Association shall accept the deed of conveyance of the Common Area upon Declarant's presentment of the same.

(b) Rights of Use and Rules and Regulations Concerning the Common Area. Every Unit Owner shall have a right and easement of use and enjoyment in and to the Common Area which easement shall be appurtenant to and shall pass with the title to every Unit, subject to the Governing Documents. The Board shall have the right to establish and enforce rules and regulations governing the use of the Common Area, including but not limited to rights of use, hours of use, delegation of use, and standards of conduct. Additional rights to establish rules and regulations governing the Common Area may be set forth and established elsewhere in the Governing Documents.

(c) Board Authority and Rights in the Common Area. The Board shall have the right, for and on behalf of the Association, to:

(i) enter into agreements or leases which provide for use of the Common Area by a similar association in consideration for use of the Common Area and facilities of the other association or for cash consideration, or for use by third parties for cash consideration;

(ii) with the approval of at least seventy-five percent (75%) of Unit Owners to sell, exchange, hypothecate, alienate, mortgage, encumber, dedicate, release or transfer all or part of the Common Area to any private individual, corporate entity, public agency, authority or utility;

(iii) grant easements for public utilities or other public purposes consistent with the intended use of the Common Area;

(iv) take such steps as are reasonably necessary or desirable to protect the Common Area against foreclosure; and

(v) take such other actions with respect to the Common Area which are authorized by or otherwise consistent with the Governing Documents.

2.4. **Declarant's Right of Use**. As part of the overall program of development of the Property into a residential community and to encourage the marketing thereof, the Declarant shall have the right of use of the Common Area, including any community buildings, without charge during the Declarant Control Period to aid in its development and marketing activities

2.5. **Limited Common Areas**. The Association's right of regulation of the Limited Common Areas is limited to the right to regulate and control architectural and aesthetic appearances of the Limited Common Areas and to require each Owner to maintenance the Limited Common Areas located within its Unit in accordance with rules and regulations established by the Association. The Association may further restrict, prohibit or limit the attachment of any fixture, piece of equipment or other structure to the exterior of the Limited Common Areas, including without limitation television antennas and short wave radio antennas, in order to preserve the appearance and visual esthetics of the Project.

2.6. **Delegation of Use**. Any Unit Owner may delegate his right of enjoyment of the Common Area to the members of his or her family, tenants, guests, licensees and invitees, but only in accordance with the applicable rules and regulations o the Association and other Governing Documents. The Board may, by rule, require Unit Owners to forfeit their right of use in the Common Area for so long as the Unit Owner has delegated his or her right of use in the Common Area to his or her tenant. The repair costs for any damage to the Common Area and their facilities, including personal property owned by the Association, caused by a Unit Owner, or by such Unit Owner's family members, tenants, guests, licensees of invitees, shall create a debt to the Association. Such debts owed to the Association as a result of damage to the Common Area and facilities shall be a specific assessment charged to the Unit Owner who caused, or whose family member, tenant, guest, licensee or invitee caused, such damage.

2.7. **Declarant's Reasonable Rights to Develop**. Notwithstanding anything in the Governing Documents to the contrary, no rule or action by the Association shall unreasonably impede Declarant's right to develop and market the Project.

ARTICLE 3
ASSOCIATION, MEMBERSHIP AND VOTING RIGHTS

3.1. **Membership**. Every Owner is a Member of the Association. Membership in the Association automatically transfers upon transfer of title by the record Owner to another person or entity, and membership in the Association is appurtenant to, and may not be separated from, ownership of a Unit.

3.2. **Voting Rights**. The Association has two (s) classes of voting membership, Class A and Class B.

(a) Class A. Every Owner is a Class A Member, except that the Declarant is not a Class A member until Declarant's membership converts to Class A membership as provided for in Section 3.2(b) below. Class A Members are entitled to one (1) vote for each Unit owned. When more than one person holds an interest in any Unit, the group of such persons shall constitute a single Member, and the vote for such Unit shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Unit. A vote cast at any Association meeting by any co-Owner, whether in person or by proxy, is conclusively presumed to be the vote of all co-Owners of the Unit concerned unless written objection is made prior to that meeting, or verbal objection is made at that meeting, by another co-Owner of the same Unit. In the event an objection is made, the vote involved shall not be counted for any purpose except to determine whether a quorum exists.

(b) Class B. The Class B member is the Declarant. The Class B member is entitled to four (4) votes for each Unit owned. Declarant will cease to be a Class B member and shall become a Class A member on the happening of one of the following events, whichever first occurs:

(i) the date upon seventy-five percent (75%) of the Lots subject to this Declaration have been conveyed to persons other than Declarant; or

(ii) the date that is seven (7) years from the date the first Lot is conveyed to a person other than Declarant; or

(iii) the date Declarant notifies the other Owners in writing that it is waiving its right to four (4) votes for each Lot it owns.

Upon the occurrence of the first of any of the foregoing events, Declarant shall thereafter be entitled to one (1) vote for each Lot owned by it.

3.3. **Change of Corporate Status**. The Association has been set up and established as a nonprofit corporation under Utah law. However, the continuing existence and viability of the Association is not vested in its corporate status. During any period in which the Association is not incorporated or otherwise has a change of corporate status (*e.g.*, involuntary dissolution under the Utah Nonprofit Corporation Act for failure to file for corporate renewal), the Governing Documents shall nevertheless continue to be effective as the Governing Documents of the Association, and the Association shall have all rights, power and authority granted in the Governing Documents, and no Unit Owner may escape or avoid any assessment, charge, lien, rule or other matter contained in the Governing Documents by virtue of such change of corporate of status. In the case of the suspension or administrative dissolution of the Association for failure to file annual reports or similar documents necessary to maintain its corporate existence, any two (2) Members are authorized, to the extent they deem necessary and without approval of the other Members, to take such actions as may be reasonably necessary to remove any suspension or administrative dissolution, including the authority to re-incorporate the Association under the same or similar name of the Association, and such corporation shall be deemed the successor to the Association.

If the Members fail to remove any suspension or reincorporate as provided herein, the Association shall continue to operate and function under the Governing Documents as an unincorporated association.

3.4. **Rulemaking Authority**. The Association may, from time to time, subject to the provisions of the Governing Documents, adopt, amend, modify and repeal reasonable rules and regulations governing the Project, including without limitation the use of any Common Area, parking restrictions and limitations, limitations upon vehicular travel within the Community, and restrictions on other activities or improvements on the Property which, in the opinion of the Board.

3.5. **Notice; Promulgation of Rules**. A copy of the Association's rules and regulations, as they may from time to time be adopted, amended or repealed, shall be mailed or otherwise delivered to each Unit Owner. Upon such mailing or other delivery, said rules and regulations shall have the same force and effect as if they were set forth in, and were a part of, this Declaration. In addition to or in lieu of providing notice by mail, the Association may provide notice by electronic means such as electronic mail (e-mail) to Unit Owners and may require that Unit Owners, in addition to keeping the Association informed as to their current mailing address, maintain a current e-mail address with the Association for such purpose.

ARTICLE 4
FINANCES AND ASSESSMENTS

4.1. **Assessments; Authority**. The Association is hereby authorized to levy assessments against the Owners as provided for herein. The following are the types of assessments that may be levied by the Association, which are more particularly described below: (a) annual assessments or charges; (b) special assessments; (c) specific assessments; (d) emergency assessments; (e) any other amount or assessment levied or charged by the Association pursuant to this Declaration; and (f) interest, costs of collection and reasonable attorney fees, as hereinafter provided.

4.2. **Creation of Lien and Personal Obligation of Assessments**. Excepting Declarant, each Owner of any Unit by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, covenants and agrees to pay to the Association all assessments and charges, however denominated, which are authorized in the Governing Documents. All such amounts shall be a charge on the Unit and shall be a continuing lien upon the Unit against which each such assessment or amount is charged, which lien shall arise when the Owner fails or refuses to pay an assessment when due. Such assessments and other amounts shall also be the personal obligation of the person who was the Owner of such Unit at the time when the assessment became due. No Owner may exempt himself or herself from liability for assessments by nonuse of the Common Area, by the sale, transfer, disposition or abandonment of his or her Unit, or by any other means. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Association or Declarant to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making or repairs or improvements, or from any other action it takes. If any Unit has more than one person as an Owner at the time an assessment or charge is made pursuant to this Article 4, the obligations and liabilities of all such persons as Owners shall be joint and several.

4.3. **Purpose of Assessments**. The assessments levied by the Association shall be used to advance the purposes for which the Association was formed, as set forth and articulated in the Governing Documents. The assessments may provide for, but are not limited to, the payment of insurance maintained by the Association; the payment of the cost of repairing, replacing, maintaining and construction or acquiring additions to the Common Area and/or Limited Common Areas; the payment and cost of maintaining any roadways; the payment of sewer, water and trash removal charges for the

Project which are not separately assessed to each Owner or Unit; the payment of administrative expenses of the Association; the payment of insurance deductible amounts; the establishment of capital and operational reserve accounts; the payment of any professional services deemed necessary and desirable by the Association; and other amounts required by this Declaration or that the Association shall determine to be necessary to meet the primary purposes of the Association.

4.4. **Initial Annual Assessments**. The Declarant shall initially establish the amount of the annual assessments. Thereafter, the establishment of annual assessments shall be according to the procedures and requirements of Section 4.5 below and the Governing Documents.

4.5. **Annual Assessments; Budgeting**.

(a) Adoption of Budget. At least sixty (60) days before the beginning of each fiscal year, the Association shall prepare a budget of the estimated Common Expenses for that year. Annual assessments for Common Expenses shall be based upon the estimated net cash flow requirements of the Association to cover items including, without limitation, the cost of routine maintenance and operating of the Common Area; the cost of common sewer and water utilities and trash removal services provided to the Project that aren't separately metered and assessed to individual Owners and Units; premiums for insurance coverage as deemed desirable or necessary by the Association; landscaping, care of grounds, and common lighting within the Common Area; routine renovations within the Common Area; wages; common water and utility charges for the Common Area; reserves for any insurance deductible; legal and accounting fees; expenses and liabilities from a previous assessment period; and the supplementing of any reserve fund established by the Association.

(b) Notice of Budget and Assessment. The Association shall send a copy of the final budget, together with notice of the amount of the annual assessment to be levied pursuant to such budget, to each Owner at least thirty (30) days prior to the effective date of such budget. The budget shall automatically become effective unless disapproved in writing by Members representing at least sixty-seven percent (67%) of all eligible votes in the Association. Any such petition must be presented to the Association within ten (10) days after notice of the budget and assessment. There shall be no obligation to call a meeting for the purpose of considering the budget except on petition of the Members as provided for special meetings pursuant to the Bylaws. Unless the budget for the assessment is disapproved by the Members as set forth above, the Association is thereafter authorized to levy the assessment as provided for herein.

(c) Failure or Delay in Adopting Budget. The failure or delay of the Association to prepare, distribute or adopt a budget for any fiscal year shall not constitute a waiver or release in any manner of an Owner's obligation to pay his or her allocable share of the expenses of the Association. In the event of such failure or delay, all Owners shall continue to pay assessments on the same basis as during the last year for which a budget was adopted and an assessment was made until notified of the amount of the new annual assessment, which new assessment shall be due on the first day of the next payment period which begins more than thirty (30) days after such new annual or adjusted budget is adopted and the Owners receive notice as provided herein.

(d) Automatic Budget Approval. Notwithstanding the foregoing, if the budget proposed by the Association will increase the annual assessment by an amount not greater than five percent (5%) more than the previous annual assessment, then such budget and corresponding annual assessment shall be automatically approved and effective upon thirty (30) days notice.

(e) Adjustment of Budget and Assessment. The Association may revise the budget and adjust the annual assessment from time to time during the year, subject to the notice requirements and

the right of the Members to disapprove the revised budget as set forth in Section 4.5(b) above; *provided, however*, that such an adjustment is exempt from the requirements of Section 4.5(b) if the adjustment would either decrease the annual assessment or increase the annual assessment by no greater than five percent (5%).

4.6. **Special Assessments**. In addition to the annual assessments, the Association may levy a special assessment in any assessment year, applicable to that year only, to cover unbudgeted expenses or expenses in excess of those budgeted, including without limitation the costs to defray, in whole or in part, the cost of any construction, reconstruction, repair or replacement of the Common Area or Limited Common Areas that may be undertaken by the Association. Any such special assessment may be levied against the entire Membership if such special assessment is for Common Expenses. Except as otherwise provided in this Declaration, any special assessment relating to Common Expenses shall require the affirmative vote or written consent of a majority of the entire Membership. Special assessments shall be payable in such manner and at such times as determined by the Association and may be payable in installments extending beyond the fiscal years in which the special assessment is approved.

4.7. **Specific Assessments**. The Association shall have the power to levy specific assessments against a particular Unit to cover costs incurred in bringing any Unit into compliance with the Governing Documents, or costs incurred as a consequence of the conduct of the Owner or occupants of the Unit, their agents, contractors, employees, licensees, invitees or guests; *provided, however*, the Association shall give the Unit Owner against whom the specific assessment is being made prior written notice and an opportunity for a hearing, in accordance with the Bylaws, before levying any specific assessment under this subsection.

4.8. **Emergency Assessments**. Notwithstanding anything contained in this Declaration, the Association may levy emergency assessments in response to an emergency situation. Prior to the imposition or collection of any assessment due to an emergency situation, the Association shall pass a resolution containing the written findings as to the necessity of such expenditure and why the expenditure was not or could not have been reasonably foreseen or accurately predicted in the budgeting process and the resolution shall be distributed to the Members with the notice of the emergency assessment. An emergency situation is one in which the Association finds:

(a) An expenditure, in its discretion, required by an order of a court, to defend the Association in litigation, or to settle litigation;

(b) An expenditure necessary to repair or maintain the Property or any part of it for which the Association is responsible where a threat to personal safety on the Property is discovered;

(c) An expenditure necessary to repair, maintain or cover actual Association expenses for the Property or any part of it that could not have been reasonably foreseen by the Association in preparing and distributing the pro forma operating budget (for example: increases in utility rates, landscape or maintenance contract services, attorney fees incurred in the defense of litigation, etc.); or

(d) Such other situations in which the Association finds that immediate action is necessary and in the best interests of the Association.

4.9. **Uniform Rate of Assessment**. Unless otherwise provided for in this Declaration or elsewhere in the Governing Documents, assessments must be fixed at a uniform rate for all Units; *provided, however*, that no assessments shall accrue against the Declarant for Units owned by Declarant so long as the Declarant has Class B membership.

4.10. **Declarant's Option to Fund Budget Deficits**. During the Declarant Control Period, Declarant may, in its sole discretion and without any obligation to do so, fund any budget deficit of the Association, including without limitation funding any initial capital or operational reserve fund. In the event Declarant funds any budget deficit, it shall not establish any obligation by Declarant to continue to fund any future deficits.

4.11. **Payment; Due Dates**. The assessments provided for herein shall commence to accrue against a Unit upon conveyance of the Unit to a bona fide purchaser, adjusting the amount of such assessment according to the number of months remaining in the fiscal year. Due dates shall be established by resolution of the Association, with such resolution. Installments of assessments may be levied and collected on a monthly, quarterly, semi-annual, or annual basis, as determined by resolution of the Association. The Association may require advance payment of assessments at closing of the transfer of title to a Unit.

4.12. **Capitalization of Association**. Upon acquisition of record title to a Unit by the first Owner thereof other than Declarant, a contribution shall be made by or on behalf of the purchaser to the working capital of the Association in an amount equal to 15% of the annual assessment per Unit for that year or in such other amount as the Association may specify which may be a flat rate from year to year approximating 15% of the annual assessment per Unit levied during the first year in which the Association adopts a budget, but in no event shall such contribution from Declarant exceed $300 per Unit. This amount shall be in addition to, and not in lieu of, the annual assessment and shall not be considered an advance payment of such assessment. This amount shall be for use in covering operating expenses and other expenses incurred by the Association pursuant to the Governing Documents.

4.13. **Effect of Non-Payment of Assessment; Remedies of the Association**. Any assessment or installment thereof not paid within thirty (30) days after the due date therefor shall be delinquent and shall bear interest from the due date at the rate of eighteen percent (18%) per annum (or such lesser rate as the Association shall determine appropriate) until paid. In addition, the Association may assess a late fee for each delinquent installment that shall not exceed ten percent (10%) of the installment.

(a) Remedies. To enforce this Article 4, the Association may, in the name of the Association:

(i) bring an action at law against the Owner personally obligated to pay any such delinquent assessment without waiving Association's lien for the assessment;

(ii) foreclose the lien against the Unit in accordance with the laws of the State of Utah applicable to the exercise of powers of sale in deeds of trust or to the foreclosure of mortgages, or in any other manner permitted by law;

(iii) restrict, limit or totally terminate any or all services performed by the Association on behalf of the delinquent Owner;

(iv) terminate, in accordance with Section 57-8a-204 of the Community Association Act, the Owner's right to receive utility services paid as a Common Expense;

(v) if the Owner is leasing or renting his Unit, the Association may, in accordance with section 57-8a-205 of the Community Association Act, demand that the Owner's tenant pay to the Association all future lease payments due from the Owner, beginning with the next monthly or other periodic payment, until the amount due to the Association is paid;

(vi) exercise any other rights authorized by the Community Association Act for non-payment of assessments and other charges;

(vii) suspend the voting rights of the Owner for any period during which any assessment or portion thereof against the Owner's Unit remains unpaid; and/or

(viii) accelerate all assessment installments that will become due within the subsequent twelve (12) months so that all such assessments for that period become due and payable at once. This acceleration provision may only be invoked against an Owner who has been delinquent in paying any assessment or installment two (2) or more times within a twelve (12) month period.

(b) Attorney Fees and Costs. There shall be added to the amount of any delinquent assessment the costs and expenses of any action, sale or foreclosure, and reasonable attorney fees incurred by the Association, together with, where applicable, an account for the reasonable rental for the Unit from time to time of commencement of the foreclosure. The Association shall be entitled to the appointment of a receiver to collect the rental income or the reasonable rental without regard to the value of the other security.

(c) Power of Sale. A power of sale is hereby conferred upon the Association which it may exercise to foreclose on any Lot or Unit to collect any assessment due under this Declaration. Under the power of sale, an Owner's Unit may be sold in the manner provided by Utah law pertaining to deeds of trust as if said Association were beneficiary under a deed of trust and said Owner was the "trustor." For purposes of foreclosing on any Unit as provided herein, and in compliance with Utah Code Ann. §57-8a-212(1)(j), the Declarant hereby conveys and warrants pursuant to Utah Code Ann. §57-1-20 and 57-8a-402 to Integrated Title Insurance Services, LLC, with power of sale, the Lots and all improvements to the Lots for the purpose of securing payment of assessments under this germs of this Declaration. The Association may designate any person or entity qualified by law to serve as trustee for purposes of power of sale foreclosure.

4.14. **Exempt Property**. The following property subject to this Declaration is exempt from the assessments created herein: (a) all property dedicated to and accepted by any local public authority; (b) the Common Area and the Limited Common Areas; (c) all Units or other real property owned by Declarant; and (d) any other property declared exempt as set forth in this Declaration or within any Plat.

4.15. **Subordination of Lien to Mortgages**. The lien of the assessments provided for herein shall be subordinate to the lien of any first Mortgage held by a Mortgagee if the Mortgage was recorded prior to the date the assessment became due.

4.16. **Termination of Lien**. A sale or transfer of any Unit shall not affect any assessment lien made as to such Unit prior to such sale or transfer; provided, however, the sale or transfer of any Unit pursuant to foreclosure of a first Mortgage or any proceeding in lieu thereof, shall extinguish the assessment lien as to payments which became due prior to such sale or transfer. No sale or transfer, however, shall relieve a Unit or Owner from personal liability for assessments coming due after he or she takes title or from the lien of such later assessments.

4.17. **Books, Records and Audit**.

(a) The Association shall maintain current copies of the Governing Documents and other similar documents, as well as its own books, records and financial statements which shall all be available for inspection by Owners and insurers as well as by holders, insurers and guarantors of first

mortgages during normal business hours upon reasonable notice. Charges shall be made for copying, researching or extracting from such documents. An Owner or holder, insurer or guarantor of a first Mortgage may obtain an audit of Association records at its own expense so long as the results of the audit are provided to the Association.

(b) The Association shall prepare a roster of Owners for each Unit and the assessments applicable thereto at the same time that it shall fix the amount of the annual assessment, which roster shall be kept by the Treasurer of the Association, who shall record payments of assessments and shall allow inspection of the roster by any Member at reasonable times.

(c) The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessment on a specified Unit has been paid. Such certificates, when properly issued, shall be conclusive evidence of the payment of any assessment or fractional part thereof which is therein shown to have been paid.

ARTICLE 5
INSURANCE

5.1. **Property and Casualty Insurance**.

(a) The Directors shall keep all insurable improvements and fixtures of the Common Area insured against loss or damage by fire for the full insurance replacement cost thereof, and may obtain insurance against such other hazards and casualties as the Association may deem desirable. The Association may also insure any other property whether real or personal, owned by the Association, against loss or damage by fire and such other hazards as the Association may deem desirable, with the Association as the Owner and beneficiary of such insurance. The insurance coverage with respect to the Common Area shall be written in the name of, and the proceeds thereof shall be payable to, the Association. Insurance proceeds shall be used by the Association for the repair or replacement of the property for which the insurance was carried. Premiums for all insurance carried by the Association are Common Expenses which shall be included in the annual assessments made by the Association. To the extent reasonably available, the Association shall obtain and continue in effect, on behalf of all Owners all insurance required to be obtained by it pursuant to Utah Code Ann. §57-8a-403, including blanket property insurance on the physical structure of all Units, the Common Area and the Limited Common Areas appurtenant thereto insuring against all risks of direct physical loss commonly insured against, including fire and extended coverage perils (the "Property Insurance"). If the Association becomes aware that Property Insurance is not reasonably available, it shall give all Owners notice of such fact within seven (7) days. The total amount of coverage provided by the Property Insurance shall not be less than 100% of the full replacement cost of the insured property at the time the insurance is purchased and at each renewal date, excluding items normally excluded from property insurance policies and without deduction for depreciation or coinsurance. The Property Insurance policy may contain a reasonable deductible and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the policy limits satisfy the requirements herein. The Property Insurance shall include coverage for any fixture, improvement or betterment installed by an Owner to his or her Unit, including floor coverings, cabinets, light fixtures, electrical fixtures, heating or plumbing fixtures, paint, wall coverings, windows and any other item permanently part of or affixed to the Unit or Limited Common Areas appurtenant thereto. Notwithstanding anything herein to the contrary, the Association is not required to obtain Property Insurance or any other insurance for any property or other improvement that is not attached to a Unit or other attached dwelling.

(b) The Property Insurance shall be written in the name of the Association, and the proceeds thereof shall be payable to the Association as trustee for the Owners. Each Owner shall be an insured under the Property Insurance policy.

(c) Insurance premiums for then Property Insurance policy, and any other insurance premiums paid by the Association, shall be a Common Expense of the Association to be included in the annual assessments levied by the Association.

(d) The Association may make a special assessment to each Owner to cover the amount of any deductible under the Property Insurance policy, not to exceed $10,000 in the aggregate or such other amount satisfying the requirements of Utah Code. Ann. §57-8a-405(9). The Association shall set aside the amount of any deductible collected pursuant to this subsection and not use the same for any purpose other than paying the deductible with respect to any claim made on the Property Insurance policy.

(e) In the event of an insured loss covered by the Property Insurance policy, the deductible shall be treated as a Common Expense in the same manner as the premiums for the Property Insurance policy. However, if the Association reasonably determines, after notice and opportunity to be heard, that the loss is the result of the negligence or willful misconduct of one or more Owners, their guests, invitees or lessees, then the Association may assess the full amount of such deductible against such Owner and the Owner's Lot.

(f) If a loss occurs that is covered by the Property Insurance policy in the name of the Association and another property insurance policy in the name of an Owner:

(i) the Association's policy provides primary insurance coverage; and

(ii) notwithstanding Subsection 5.1(e) and subject to Subsection 5.1(g) (A) the Owner is responsible for the Association's policy deductible, and (B) the Owner's policy applies to that portion of the loss attributable to the Association's policy deductible.

(g) As used in this Subsection 5.1(g), "Covered Loss" means a loss, resulting from a single event or occurrence, that is covered by the Association's Property Insurance policy; "Lot Damage" means damage to any combination of a Lot, a dwelling on a Lot, or Limited Common Areas appurtenant to a Lot or appurtenant to a dwelling on a Lot; and "Lot Damage Percentage" means the percentage of total damage resulting in a Covered Loss that is attributable to Lot Damage. An Owner who owns a Lot that has suffered Lot Damage as part of a Covered Loss is responsible for an amount calculated by applying the Lot Damage Percentage for that Lot to the amount of the deductible under the Association's Property Insurance policy. If an Owner does not pay the amount required under this Subsection 5.1(g) within thirty (30) days after substantial completion of the repairs to, as applicable, the Lot, a dwelling on the Lot, or Limited Common Areas appurtenant to the Lot, the Association may levy an assessment against a the Lot for that amount.

(h) The Association shall provide notice to each Owner of the Owner's obligation under Subsection 5.1(g) for the Association's policy deductible and of any change in the amount of the deductible.

(i) If, in the exercise of the business judgment rule, the Association determines that a claim is likely not to exceed the Association's Property Insurance policy deductible, then (i) the Owner's policy is considered the policy for primary coverage to the amount of the Association's policy deductible; (ii) the Owner who does not have a policy to cover the Association's Property Insurance policy deductible

is responsible for the loss to the amount of the Association's policy deductible, as provided in Subsection 5.1(g); and (iii) the Association need not tender the claim to the Association's insurer.

5.2. **Replacement or Repair of Property**. In the event of damage to or destruction of any part of the Common Area improvements, the Association shall repair or replace the same from the insurance proceeds available. If such insurance proceeds are insufficient to cover the costs of repair or replacement of the property damaged or destroyed, the Association may make a reconstruction assessment against all Unit Owners to cover the additional cost of repair or replacement not covered by the insurance proceeds, in addition to any other common assessments made against such Unit Owner. In the event that the Association is maintaining blanket casualty and fire insurance on the Units, the Association shall repair or replace the same to the extent of the insurance proceeds available. In the event of damage or destruction by fire or other casualty to any portion of the Property covered by insurance written in the name of the Association, the Directors are empowered to and shall represent the Members in any proceedings, negotiations, settlements or agreements. The Association is appointed attorney-in-fact of each Owner for this purpose.

5.3. **Damage to a Portion of the Project**.

(a) If a portion of the Project for which the Association is required to obtain Property Insurance is damaged or destroyed, the Association shall repair or replace the portion within a reasonable amount of time unless:

(i) the Project is terminated;

(ii) repair or replacement would be illegal under a state statute or local ordinance governing health or safety; or

(iii) (A) at least 75% of the allocated voting interests of the Owners in the Association vote not to rebuild; and (B) each Owner of a dwelling on a Lot and the Limited Common Areas appurtenant to that Lot that will not be rebuilt votes not to rebuild.

(b) If a portion of the Project is not repaired or replaced because the Project is terminated, the termination provisions of applicable law and the Governing documents apply.

The cost of repair or replacement in excess of Property Insurance proceeds and reserves is a Common Expense.

5.4. **Entire Project Damaged of Destroyed**. If the entire Project is damaged or destroyed and not repaired or replaced, then:

(a) The Association shall use the Property Insurance proceeds attributable to any damaged Common Area of Limited Common Areas to restore the damaged area to a condition compatible with the remainder of the Project;

(b) The Association shall distribute the insurance proceeds attributable to Lots and common areas (if any) that are not rebuilt to:

(i) the Owners of the Lots that are not rebuilt;

(ii) the Owners of the Lots to which the Common Area or Limited Common Areas that are not rebuilt were allocated; or

(iii) the Mortgagees or lien holders of the Lots; and

(c) The Association shall distribute the remainder of the insurance proceeds to all the Owners or Mortgagees in proportion to the Common Expense liabilities of all the Lots.

5.5. **Decision Not to Rebuild a Unit**. If the Owners vote not to rebuild a Unit: (a) the Unit's allocated interests are automatically reallocated upon the Unit Owner's vote as if the Unit had been condemned; and (b) the Association shall prepare, execute, and submit for recording an amendment to the Declaration reflecting the reallocations described in this Section 5.4.

5.6. **Liability Insurance**. The Directors shall obtain a comprehensive policy of public liability insurance covering all of the Common Area for at least $1,000,000.00 per occurrence for personal or bodily injury and property damage that results from the operation, maintenance or use of the Common Area. Liability insurance policies obtained by the Association shall contain a "severability of interest" clause or endorsement which shall preclude the insurer from denying the claim of an Owner because of negligent acts of the Association or other Owners.

5.7. **Fidelity Insurance**. The Association, in its discretion, may elect to obtain fidelity coverage against dishonest acts on the part of managers, directors, officers, employees, volunteers, management agents or others responsible for handling funds held and collected by the Association for the benefit of the Owners or Members. If the Association elects to procure fidelity insurance, the Association shall seek a policy which shall (a) name the Association as obligee or beneficiary, (b) be written in an amount not less than the sum of (i) three months' operating expenses and (ii) the maximum reserves of the Association which may be on deposit at any time, and (c) contain waivers of any defense based on the exclusion of persons who serve without compensation from any definition of "employee."

5.8. **Annual Review of Policies**. The Association shall review all insurance policies at least annually in order to ascertain whether the coverage contained in the policies is sufficient to make any necessary repairs or replacements of the property which may be damaged or destroyed. The Association may, to the extent it deems necessary to more fully protect and insure the Association and its property, or to otherwise comply with evolving laws and insurance standards, modify the coverage standards set forth in this Article 5 without the necessity of amending this Declaration.

5.9. **Changes to Community Association Act**. The insurance provisions set forth in this Article 5 are intended to comply with and conform to the terms and conditions in Part 4 of the Community Association Act. If Part 4 of the Community Association Act is amended or modified after the date of this Declaration, the Declarant during the Declarant Control Period and the Association after the Declarant Control Period may amend this Article 5 to conform to the terms and conditions of Part 4 of the Community Association Act, as amended, by filing a recorded amendment to or restatement of this Declaration in the official records of the _____ County Recorder, State of Utah.

ARTICLE 6
ARCHITECTURAL CONTROLS AND STANDARDS

6.1. **Architectural Control Committee**. There is hereby created an Architectural Control Committee ("ACC") which shall be composed of a minimum of three (3) or more representatives appointed by the Board of Directors. If the Board of Directors does not establish or appoint the ACC the Board itself shall carry out the functions and responsibilities of the ACC. Notwithstanding the above, during the Declarant Control Period, the Declarant shall be entitled to carry out the functions and responsibilities of the ACC or may otherwise appoint all members of the ACC. The Association shall

have no jurisdiction over architectural matters during the Declarant Control Period. Unless appointed by the Declarant, all members of the ACC shall be Members of the Association.

6.2. **Architectural Control Committee Approval**. The ACC's primary responsibility is to ensure that the exteriors of all Units, including the roofs, be maintained in the same color and texture as originally established by the Declarant and that no Unit Owner or other person attach, erect, install, or place anything on the exterior of Units or the interior of Units where the same might be visible from outside the Unit, or other buildings and structures in the Property without first obtaining ACC approval in accordance with this Article. In this regard, no structure, building, fence, wall, or thing shall be placed, erected, or installed upon any Lot or to any Unit and no improvements or other work (including exterior alterations of existing improvements, or planting or removal of landscaping) shall take place within the Property until the plans and specifications showing, without limitation, the nature, kind, shape, height, materials, colors and location of the same shall have been submitted to and approved in writing by the ACC in accordance with this Article and any rules and regulations adopted by the ACC pursuant to the authority of this Article. ACC approval shall be required regardless of whether the structure, building, fence, wall, or thing to be constructed, placed, erected, or installed is new, or an addition, extension or expansion, change or alteration, or re-construction, replacement, re-erection, or re-installation of any of the foregoing.

6.3. **Rules, Regulations, Guidelines, and Procedures**. The Architectural Control Committee may establish rules, regulations, guidelines, and procedures to govern the submission, review, and approval of any plans submitted to it for review. Any rules, regulations, guidelines, and procedures established by the Architectural Control Committee hereunder may be made available to any Member upon request by that Member.

6.4. **Abandonment of Architectural Plan**. Without the prior written approval of at least sixty-seven percent (67%) of the Entire Membership, neither the Association nor the ACC shall have the power, by act or omission, to change, waive or abandon any plan, scheme or regulations pertaining to the architectural design or the exterior appearance or maintenance of Units, and the maintenance of the Common Area and Limited Common Areas, including walls, fences, driveways, lawns and plantings.

6.5. **Application to Declarant**. The Declarant shall not be required to comply with the provisions of this Article in the initial construction of the Property.

ARTICLE 7
PARTY WALLS

7.1. **General Rules of Law to Apply**. Each wall that is built as a part of the original construction upon the Project which serves and/or separates any two adjoining Units shall constitute a party wall. To the extent not inconsistent with the provisions of this Article 6, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

7.2. **Sharing of Repair and Maintenance**. The cost of reasonable repair and maintenance of a party wall shall be shared equally by the Owners who make use of the wall.

7.3. **Destruction by Fire or Other Casualty**. If a party wall is destroyed or damaged by fire or other casualty, then, to the extent said destruction or damage is not covered by insurance and repaired out of the proceeds of the same, any Owner who has used the wall may restore it, and if the other Owners

thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use, without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

7.4. **Exposure to Elements**. Notwithstanding any other provision of this Article 6, an Owner who by negligent or willful actions causes a party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements to the extent that said protection is not covered by insurance and paid for out of the proceeds of the same.

7.5. **Right to Contribution Runs with Land**. The right of any Owner to contribution from any other Owner under this Article 6 shall be appurtenant to the land and shall pass to such Owner's successors-in-title.

ARTICLE 8
MAINTENANCE

8.1. **Association's Responsibility**. The Association shall be responsible for maintenance of the Common Area and the Limited Common Areas not designated to any particular Unit(s). The cost of such maintenance shall be a Common Expense. This maintenance includes but is not limited to upkeep of all landscaping, upkeep and maintenance of all roadways, street lights, sidewalks, and parking areas, and upkeep and maintenance of all buildings and facilities which constitute part of the Common Area. The Association shall not have any responsibility for upkeep and maintenance of the Project or the Units, unless expressly required by this Declaration or expressly assumed by the Association pursuant to the authority of this Declaration.

8.2. The Association shall not have any responsibility for upkeep and maintenance of the Project or the Units, unless expressly required by this Declaration or expressly assumed by the Association pursuant to the authority of this Declaration.

8.3. **Owner's Responsibility**. Each Owner shall be responsible for maintenance of his or her Unit, and any Limited Common Area designated for the exclusive use and occupancy of his or her Unit, in a manner consistent with all applicable provisions of the Governing Documents, unless such maintenance responsibility is otherwise assumed by or assigned to the Association by the Governing Documents. Without limiting the foregoing, each Owner shall, at such Owner's cost and expense, maintain the Limited Common Area appurtenant to his or her Unit so as to preserve, protect and restore the appearance thereof consistent with the original design and construction and with the Limited Common Areas of the other Units to as to maintain a consistency in the design, construction, color and quality of the exteriors of all Units. Each Unit Owner shall also be responsible, at his or her sole cost and expense, to remove snow, ice and other obstacles from any public or private walkways or sidewalks appurtenant to his or her Unit. For purposes of this Section 7.2, public sidewalks located in front of (and for end Units, to the side of) each Unit shall be deemed appurtenant to that Unit. The Association shall, however, in the default of the Owner to perform maintenance with respect to an Owner's Limited Common Area which is such Owner's responsibility, and after ten (10) days' written notice to such Owner (which notice shall not be required in the event of emergency or threat to life, health, property or safety), provide exterior maintenance upon the Limited Common Area for which such Owner is responsible and may shall charge such Owner the costs of such maintenance as a specific assessment.

8.4. **Access at Reasonable Hours**. For the sole purpose of performing the maintenance required or otherwise authorized by this Article 7, the Association, through its duly authorized agents or employees, shall have the right, after reasonable notice to the Owner, to enter upon any Lot or Limited Common Area at reasonable hours.

8.5. **Other Services Provided by Association**. In addition to the maintenance of the common sewer and water utility servicing the Project and the payment of all costs with respect thereto (including costs for water and sewer usage that are not separately assessed to Units, as described in Section 4.3 above), to the extent determined to be necessary or desirable by the Association, the Association may provide additional services to the Unit Owners as a Common Expense or specific assessment, as appropriate.

8.6. **Alteration of Certain Maintenance Duties by Rule**. The duty of maintenance for the area of a Lot outside the walls of the Unit, and the Limited Common Areas adjacent and appurtenant to the Units may be altered by rule of the Association.

ARTICLE 9
USE AND CONDUCT RESTRICTIONS AND REQUIREMENTS

The following use and other restrictions shall apply to the Project. These restrictions are in addition to those established by federal, state, or local law and ordinance and those which may be set forth elsewhere in the Governing Documents.

9.1. **General Use Restrictions**. All of the Property which is subject to this Declaration is hereby restricted to residential dwellings and buildings in connection therewith. All buildings or structures erected on the Property shall be of new construction and no buildings or structures shall be removed from other locations to the Property. After the initial construction of a Unit on a Lot, no subsequent building or structure dissimilar to that initial construction shall be built on that Lot. No building or structure of a temporary character, trailer, basement, tent, camper, shack, garage, barn or other outbuilding shall be placed or used on any Lot at any time.

9.2. **Quiet Enjoyment**. No noxious or offensive activity shall be carried on upon any part of the Property nor shall anything be done thereon which may be or may become an annoyance or nuisance to the Unit Owners, or which shall in any way interfere with the quiet enjoyment of each of the Owners or which shall in any way increase the rate of insurance.

9.3. **Parking**. No Owner shall park more than two (2) motor vehicles on his or her Lot or within the Project at any time. No motor vehicle which is inoperable shall be allowed within the Property (other than within the enclosed garage of a Unit), and any inoperable motor vehicle which remains parked on any Lot (other than in the enclosed garage of a Unit) over 72 hours shall be subject to removal by the Association at the vehicle owner's expense, which expense shall be payable on demand. If the motor vehicle is owned by a Unit Owner, any amounts payable to the Association pursuant to this Section 8.4 shall be secured by the Lot, and the Association may enforce collection of said amounts in the same manner provided for in this Declaration for the collection of assessments. Recreational vehicles, boats, travel trailers and similar personal property shall only be parked within the Project as permitted by rule of the Association.

9.4. **Timeshares Prohibited**. No Unit Owner shall offer or sell any interest in his Unit under a "timesharing" or "interval ownership" plan, or any similar plan.

9.5. **Signs**. The Association shall have the right to regulate the display, use, size and location of signs within the Property. The right to regulate includes the right of prohibition. Notwithstanding the Association's right of regulation, no signs, advertising signs, billboards, objects of unsightly appearance or nuisances shall be erected, placed or permitted to remain on the exterior of any Unit, within or upon the Common Area, or any portion of the Property. Nor shall such signs, billboards, objects of unsightly appearance, or nuisances be placed or permitted to remain within any Unit where the same are visible

from the public streets or roadways. The foregoing restrictions shall not apply to the commercial activities, signs and billboards, if any, of the Declarant or its agents during the Declarant Control Period or by the Association in furtherance of its powers and purposes set forth in the Governing Documents, as the same may be amended from time to time.

9.6. **Compliance with Laws**. No Unit Owner shall permit anything to be done or kept in his Unit or any part of the Property that is in violation of any applicable federal, state, or local law, ordinance, or regulation.

9.7. **No Commercial Activities**. No commercial activities of any kind whatever shall be conducted on any portion of the Property, including an in-home business as defined by local ordinances. The foregoing restrictions shall not apply to the commercial activities, signs and billboards, if any, of the Declarant or its agents during the construction and sales period or by the Association in furtherance of its powers and purposes set forth in the Governing Documents, as the same may be amended from time to time or to any on-site property manager under contract to perform services for the Association.

9.8. **Smoking**. The Association is authorized to, by rule or resolution, prohibit tobacco smoking within or around the Common Areas and any other portion of the Property, including within Units or on patios of any Unit when it is reasonably determined that the smoke or the smell from the smoking might filter or drift into other Units or interfere with the use and enjoyment of the Property by other Unit Owners. In addition, the Association is authorized to enforce and otherwise bring an action for nuisance under the provisions of Title 78, Chapter 38 of the Utah Code for and on behalf of any Unit Owner against any other Unit Owner or occupant whose smoking creates or constitutes a nuisance under said provision of the Utah Code.

9.9. **Pets and Animals**.

(a) Restrictions. The Association has the right to regulate and restrict, by rule of the Association, the keeping and harboring of pets and animals within the Property, including the keeping and harboring of pets and animals within the Units. This right includes the right to restrict the type, breed or species of animal, the number of animals which may be kept, the areas in which the animals may be kept or taken, and to completely eliminate the keeping and harboring of pets. Until such time as the Association adopts a policy expressly authorizing the keeping of pets and animals, the same shall not be prohibited within the Property. The Association may also establish procedural rules and regulations to implement its rules which should include provisions for notice and hearing. Commercial breeding of pets and animals is prohibited within the Property and may not be allowed or authorized by Association rule or resolution.

(b) Owner Responsibility. In the event the Association authorizes the keeping of pets and animals, Unit Owners must take due care to ensure that their pets and animals do not make excessive noises, cause any offensive smell, or create any physical threat to the safety of any other Unit Owner or person within the Property, or the safety of any guests, lessees, or invitees, particularly among children. Unit Owners are responsible for any property damage, injury, or disturbance that their pet may cause or inflict anywhere within the Property. To the extent the Association is subjected or otherwise exposed to any liability, claims, damages, costs, losses, or expense as a result of the actions of an animal, the Association has the right to make a claim against the Unit Owner. Unit Owners shall indemnify the Association from any claims, damages, or causes of action that arise from or otherwise relate to the conduct of their pets. This indemnification shall include any attorney fees, costs and expenses incurred by the Association.

9.10. **Hazardous Activities and Substances**. No Owner shall engage in or permit any of said Owner's guests, visitors, tenants or invitees to engage in any activity that will cause an increase in insurance premiums for insurance coverage on the Property nor shall any Owner or any Owner's guests, visitors, tenants or invitees engage in any activity that will cause or permit any hazardous substance or material to be stored, used or disposed of on or within the Property.

9.11. **External Apparatus**. The Association, by rule adopted by the Association, regulate, restrict or prohibit Owners from hanging, displaying, attaching or otherwise affixing any object (including without limitation awnings, canopies or shutters) on the exterior or roof of such Owner's Unit if the same is visible from the public street in front of the Project (*i.e.,* Merrimac Avenue) if such object detracts from the overall appearance and appeal of the Project.

9.12. **Exterior Television or Other Antennas**. To the extent not prohibited by law, no television, radio or other electronic antenna or device of any type shall be erected, constructed, affixed, placed or permitted to remain on the exterior of any Unit, on any Common Area, or the exterior of any building or structure upon the Property, or within any Unit, including the roof, where the same is visible from outside the Unit. The Association is hereby authorized to establish and promulgate rules and regulations to govern the placement and installation of antennas covered by the Federal Communications Commission's rules on "Over-the-Air Reception Devices," which requires such antennas to be screened from street level view.

9.13. **Garbage Removal**. All rubbish, trash and garbage shall be regularly removed from the Unit and shall not be allowed to accumulate thereon. Garbage shall be placed in proper containers. Garbage containers for each Unit shall be kept inside the garages of such Units until such garbage containers are ready to be placed on the street for pick up by the city.

9.14. **Pest Control**. No Unit Owner or Unit occupant shall permit any object or condition to exist within or upon the Unit which would induce, breed or harbor insects, rodents or other pests. Each Unit Owner shall perform such pest control activities within and upon his or her Unit as may be necessary to prevent insects, rodents and other pests from being present in his or her Unit.

9.15. **Oil and Mining Operations**. No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in the Property. No derrick, lift, shaft or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon the Property.

9.16. **Interior Utilities**. All utilities, fixtures and equipment installed within a Lot, commencing at a point where the utility lines, pipes, wires, conduits or systems enter boundaries of a Lot, shall be maintained and kept in repair by the Owner thereof. An Owner shall do no act or any work that will impair any easement or hereditament nor do any act nor allow any condition to exist which will adversely affect the other Lots or Owners.

ARTICLE 10
LEASES AND LEASING

10.1. **Purpose and Intent of Lease Restrictions**. The purpose of this Article 9 is to further Declarant's intent to protect the value and desirability of the Project as a harmonious and attractive residential community and to avoid any deterioration of the same into a transient-apartment like community.

10.2. **Notification of Board**. An Owner who enters into a lease or rental agreement must notify the Association of the same, in writing, within fifteen (15) days after execution of the lease or rental agreement and along with such notification must provide to the Association a copy of the lease or rental agreement. An Owner must comply with the foregoing notice provision for each tenant with which it enters into a lease or rental agreement and for each renewal of any existing lease or rental agreement.

10.3. **Leasing Restrictions**. Any lease or rental agreement for any Unit shall be in writing and shall clearly state that (a) the terms of such lease or rental agreement shall be subject in all respects to the provisions of this Declaration and the other Governing Documents and (b) any failure by tenant/lessee/renter to comply with the terms of such documents shall be a default under the lease. Units may be leased only in their entirety. There shall be no subleasing of Units or assignment of leases without prior written approval of the Association. To further Declarant's intent, as set forth above, Owners may only lease their Units to Single Families. For purposes of this Article, the term "Single Family" means an individual living alone, a group of two or more persons each related to the other by blood, marriage or legal adoption, or a group of not more than four persons who maintain a single housekeeping unit within the Unit. Any lease or rental agreement, whether an initial agreement or any renewal thereof, shall provide for a minimum lease term of not less than sixth (6) months; *provided, however*, the Association shall have the power to allow leases for a term of less than six months upon a showing by the Owner that such a lease is required to avoid undue hardship. Furthermore, the Association is authorized to make this Article more restrictive, including without limitation requiring longer minimum lease periods and establishing rental caps on the number of Units that may be rented within the Property.

10.4. **Enforcement Against Owner**. Notwithstanding any other rights of enforcement under this Declaration and other Governing Documents, or by applicable law, the Association may impose a fine, not to exceed $250, which shall constitute a lien upon such Owner's Lot, for each violation by Owner's tenant/lessee/renter of this Declaration or other Governing Documents. Such fine shall be imposed after the Association has given an Owner not less than ten (10) days' written notice of such violation, and the Owner has failed to take appropriate actions within such 10-day period to remedy the same; *provided, however*, the Association shall not be required to give written notice before assessing a fine if the Association has previously given the Owner written notice during the preceding 12-month period for the same or similar violations. The Association may impose an additional fine on the Owner for each day such violation continues after the 10-day notice period provided herein (unless the Association is not required to give ten (10) days' written notice as provided herein), which additional fines shall constitute a lien upon such Owner's Lot. The Association need not provide any additional notice prior to fining an Owner for a continuing violation. There shall be added to any such fine reasonable attorney fees and costs incurred by the Association in enforcing this Article. Any fine levied pursuant to this Article shall be recoverable by the Association in the same manner as an assessment under Article 4 and shall create a lien in favor of the Association against the Owner's Unit in the same manner as an assessment.

10.5. **Enforcement of Lease by Association**. Any lease or rental agreement for any Unit within the Property shall include the following language, and, if such language is not expressly contained in such lease or rental agreement, the Owner leasing his Unit hereby agrees that such language shall be deemed incorporated into the lease:

NOTICE: Any violation of the Declaration and/or any rules and regulations adopted pursuant thereto (collectively, the "Violations") by the lessee, tenant, any occupant, or any guest of lessee, is deemed to be a default under the terms of the lease and authorizes the Landlord/Owner to terminate the lease without liability and to evict the lessee in accordance with Utah law. The Landlord/Owner hereby delegates and assigns to the Association, or any management company which contracts with the Association, power and authority of enforcement against the lessee for breaches resulting from any Violations, including the power and authority to evict the lessee as attorney-in-fact on behalf and for the benefit of the Landlord/Owner, in accordance with the terms hereof. If the Association proceeds to evict the lessee, any costs, including reasonable attorney fees, court costs, and any other expenses incurred by the Association associated with the eviction shall be an assessment and lien against the Unit.

10.6. **Cumulative Nature of Remedies**. The remedies provided in this Article are cumulative and in addition to any remedies provided in this Declaration or at law or in equity.

ARTICLE 11
SAFETY AND SECURITY

Each Owner and occupant of a Unit, and their respective guests and invitees, shall be responsible for their own personal safety and security of their property within the Property. Neither the Association nor Declarant shall in any way be considered insurers or guarantors of safety or security within the Property, nor shall either be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken.

ARTICLE 12
EASEMENTS

12.1. **Encroachments**. Each Lot and the Property included in the Common Area and Limited Common Area shall be subject to an easement for encroachments created by construction, settling and overhangs, as designed or constructed by the Declarant. In the event a Townhome or permitted structure containing on a Lot is partially or totally destroyed and then rebuilt, the Owners of the Lots so affected agree that minor encroachments of parts of the adjacent Units, Common Area, or Limited Common Areas due to construction shall be permitted and that a valid easement for said encroachment and the maintenance thereof shall exist.

12.2. **Utilities**. There is designated on the Plat an easement upon, across, over and under the Property for public utility purposes. By virtue of this easement, it shall be expressly permissible for all public utilities serving the Property to lay, construct, renew, operate and maintain conduits, cables, pipes, mains, ducts, wires and other necessary equipment on the Property, provided that all such services shall be placed underground, except that said public utilities may affix and maintain electrical and/or telephone wires, circuits and conduits on, above, across and under roofs and exterior walls. Notwithstanding anything to the contrary contained in this Section 11.2, no sewers, electrical lines, water lines, or other utilities may be installed or relocated on the Property in such a way as to unreasonably encroach upon or limit the use of the Common Area, the Common Areas or any structure thereon. In the initial exercise of easement rights under this Section 11.2, a utility shall make reasonable efforts to occupy and use the same physical location or lane as other utilities. After a utility service has initially exercised its easement rights under this Section 11.2, the utility shall make reasonable efforts to occupy and use the same physical location as its prior installations. Should any utility furnishing a service covered by the general easement herein provided request a specific easement by separate recordable document, Declarant or the Association shall have the right to grant such easement on said Property without conflicting with the

terms hereof. Declarant reserves the right to convey to itself and to other adjoining landowners, easements for roadway and utility use in the Project and the right to connect to and use utility easements owned or controlled by the Association or serving the Property.

12.3. **Maintenance by Association**. An easement is hereby granted to the Association, its officers, agents, employees and to any maintenance company selected by the Association to enter in or to cross over a Lot and any Limited Common Area to perform the duties of maintenance and repair authorized or permitted the Association under this Declaration or the other Governing Documents.

12.4. **Drainage and Irrigation Easements**. Declarant reserves for itself and its successors and assigns, and for the Association, and its officers, agents, employees and successors and assigns, an easement to enter on, across, over, in and under any portion of the Property for the purpose of modifying the grade of any drainage channels on the Property to improve the drainage of water. Declarant also reserves the right to use or delegate the use of any irrigation ditches existing on the Property on the date this Declaration is recorded, and Declarant reserves for itself and its successors and assigns the right to construct, access and maintain additional irrigation ditches and lines on the Property for such other purposes as Declarant may from time to time deem appropriate.

12.5. **Owners' Easements of Enjoyment**. Every Owner has a right and easement of use and enjoyment in and to the Common Area and Limited Common Areas designated by the Declarant for the exclusive use of an Owner's Unit. This easement is appurtenant to and passes with the title to every Lot, subject to the provisions of the Governing Documents. A Unit Owner has no easement of use of the air space outside of the boundaries of his Unit or, in the case of a patio or deck, outside the confines of the patio or deck as depicted on the Plat. Therefore, subject to the Association's right of regulation, each Unit Owner's easement of use with respect to an appurtenant patio or deck shall not extend (i) horizontally beyond or outside of the center line of any wall or other exterior surface constituting the perimeter boundary of the patio or deck or (ii) vertically beyond the interior surface of any covered area or ceiling over the patio/deck. In the event that a patio or deck is uncovered, the Unit Owner's easement of use of the airspace for such patio or deck shall not extend beyond the height of the interior surface of the ceiling within the Unit Owner's Unit.

12.6. **Easement for Declarant**. The Declarant shall have a transferable easement over and on the Project and the facilities and utilities of the Project for the purpose of making improvements on the Property for the purpose of doing all things reasonably necessary and proper in connection with the development and marketing of the Project.

12.7. **Reservation of Easements by Declarant**. The Declarant hereby reserves to itself during the Declarant Control Period the right to reserve easements over, beneath and through the Property, including over the Common Area and Limited Common Area and related facilities, for the purpose of making improvements to and developing the Property, including without limitation constructing, installing, marketing and maintaining any landscaping features, entrance features, project signage, street lights, paths, trails or sidewalks or other facilities or things benefiting the Property. The Declarant reserves to itself during the Declarant Control Period the right to make any dedications and to reserve, grant, vacate or terminate any easements, rights-of-ways and licenses as may be reasonably required by any governmental authority or to carry out the intent and design of the Declarant's plan for development of the Property, without compensation therefor.

12.8. **Easements of Record**. The easements provided for in this *Article 11* shall in no way affect any other recorded easement.

12.9. **Limitations on Easements**. In no event shall any easement granted or reserved herein be construed to or have the effect of permitting entry into the interior portion of any Unit.

ARTICLE 13
SPECIAL DEVELOPMENT RIGHTS

13.1. **Intent and Purpose of Special Development Rights**. In addition to any other rights granted or reserved to the Declarant in this Declaration and the other Governing Documents, and notwithstanding any covenants, conditions, restrictions or other provisions of limitation within this Declaration, the Declarant, as the developer of the Property, is granted special development rights. These combinations of rights maximize the flexibility of the Declarant to adjust the size and mix of the Property to the demands of the marketplace, both before and after creation of the Project. This Declaration shall be liberally construed to advance Declarant's rights and interest in developing the Property.

13.2. **Municipal Zoning and Subdivision Approvals**. The Declarant shall have the right to further subdivide the Property and to apply for any zoning or subdivision approvals or permits from _____, Utah, or any other applicable governmental authority with respect to the Property or any adjacent property owned by Declarant, whether or not such adjacent property is annexed into the Project. This right includes but is not limited to applying for and obtaining zoning permits, subdivision approvals, plat approvals or approvals to amend the Plat or any plats. Further, except for any such approval that would (a) affect title to the Owner's Unit or (b) alter the boundaries of an Owner's Lot, each Unit Owner hereby waives his or her right to object to any such approval sought by Declarant, and, to the extent the approval and consent of any Owner is required under state or local law each Owner agrees to sign the application or other documents required for such action.

13.3. **Declarant Business, Marketing and Sales**. Notwithstanding any provisions to the contrary contained in this Declaration or any other Governing Documents, it shall be expressly permissible for Declarant, or its written designee, to maintain such facilities and conduct such activities as in the sole opinion of Declarant may be reasonably required, convenient or incidental to the construction and sale of Units during the Declarant Control Period, and upon such portion of the Property as Declarant deems necessary, including without limitation a business office, storage areas, construction yard, signs, model units and sales offices. As part of the overall program of development of the Property into a residential community and to encourage the marketing thereof, the Declarant shall have the right of use of any Units which have not been conveyed to purchasers without charge during the Declarant Control Period to aid in its marketing activities.

13.4. **Additional Development Rights**. The Declarant shall have the right to (a) dedicate any access roads and streets serving the Property for and to public use, to grant road easements with respect thereto and to allow such street or road to be used by owners of adjacent land; (b) convert any part or portion of the Property to a different regime of residential ownership; or (c) create or designate common areas or additional Limited Common Areas within the Property.

13.5. **Assignment of Declarant's Rights**. Any and all rights and powers of the Declarant contained in this Declaration and other Governing Documents may be delegated, transferred or assigned by the Declarant, in whole or in part. To be effective, any such delegation, transfer, or assignment must be in writing, signed by Declarant, indicate the extent and nature of such assignment, and be recorded in the Office of the _____ County Recorder

ARTICLE 14
AMENDMENT

14.1. **By Class A Members**. Except as otherwise specifically provided herein, this Declaration may be amended, modified, extended, or revoked, in whole or in part, by the affirmative vote or written consent, obtained by written ballot or otherwise, or any combination thereof, of Owners representing at least sixty-seven percent (67%) of the total votes in the Association. Notwithstanding the above, the percentage of votes necessary to amend a specific provision shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that provision.

14.2. **By Declarant**. Declarant has the right to unilaterally amend, modify, extend or revoke this Declaration for any purpose during the Declarant Control Period, with or without notice to the Class A Members. Thereafter, Declarant may unilaterally amend this Declaration if such amendment is necessary (a) to bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination; (b) to enable any reputable title insurance company to issue title insurance coverage on any Lot; (c) to enable any institutional or governmental lender, purchaser, insurer, or guarantor of mortgage loans to make, purchase, insure, or guarantee mortgage loans on any Lot; (d) to satisfy the requirements of any local, state or federal governmental agency; or (e) to correct any scrivener's error. However, any such amendment occurring after the Declarant Control Period shall not adversely affect the title to any Lot unless the Owner shall consent in writing. Declarant's right to amend shall be construed liberally and shall include, without limitation, the right to amend and/or restate this Declaration in part or in its entirety.

14.3. **By the Association**. The Association has the right, after the Declarant Control Period, to unilaterally amend this Declaration if such amendment is necessary to bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination.

14.4. **Validity**. No amendment made by the Class A Members or the Association during the Declarant Control Period shall be effective unless the Declarant provides its prior express written consent to such amendment, which consent is within Declarant's sole and absolute discretion. Any procedural challenge to an amendment must be made within six months of its recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration.

14.5. **Effective Date**. Unless a later effective date is specified in the amendment, any amendment shall be immediately effective upon recording in the office of the _____ County Recorder a copy of such amendment accompanied by a verified certificate of the Secretary of the Association stating that the required number of votes or consents was obtained and that a record of such votes or originals of the consents will be placed on file in the Association's office. In the case of unilateral amendment by Declarant as provided for herein, such amendment shall be immediately effective upon recording in the official records of the _____ County Recorder, State of Utah, a copy of such amendment signed and verified by the Declarant.

ARTICLE 15
ENFORCEMENT

15.1. **Violations Deemed a Nuisance**. Every violation of this Declaration or any rule, regulation, or resolution established pursuant to the authority of this Declaration is deemed a nuisance and is subject to all the remedies provided for the abatement or correction of the violation provided for in this Declaration, any rule, regulation or resolution, or by law or equity.

15.2. **Legal Action Authorized**. The Association, the Declarant or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all provisions of this Declaration or any rule, regulation or resolution established pursuant to the authority of this Declaration, including all charges and liens now or hereafter imposed pursuant to the authority of this Declaration, against any person, persons or entities violating or attempting to violate any provision of this Declaration or any rule, regulation or resolution established pursuant to the authority of this Declaration, to restrain or abate or otherwise recover damages for the violation, and against the land to enforce any charge or lien created by this Declaration. In addition to taking legal action, the Declarant and the Association shall have the right to grant variances and stay enforcement proceedings against any Owner on a case-by-case basis when they determine such action is in the best interests of the Association.

15.3. **Fines and Penalties**. The Association may levy a fine or penalty against any Owner who fails to refrain from violating this Declaration or any rule or regulation established pursuant to the authority of this Declaration. Such fine or penalty shall be in an amount that is specifically provided for in a fine schedule adopted, and amended from time to time, by the Association. The Association may establish time frames and requirements for written notice, hearings, and cure periods for Owners in violation prior to levying such fine or penalty, which notice shall be at least 48 hours. Any fine or penalty levied by the Association that is not paid within 15 days (such time period shall be stayed should the Governing Documents require any period to cure or for notice and hearing) shall be recoverable by the Association in the same manner as an assessment under Article 4, and shall create a lien in favor of the Association against the Owner's Unit in the same manner as an assessment.

15.4. **Attorney Fees and Costs**. Any fine or penalty levied against an Owner for any violation shall include any attorney fees and costs incurred by the Association with respect to such violation. The prevailing party in any action to enforce this Declaration or any rule or regulation established pursuant to the authority of this Declaration shall be entitled to an award of reasonable attorney fees and costs incurred in such action.

15.5. **Nonexclusive Remedies**. All the remedies set forth in this Declaration are cumulative and not exclusive to any others provided elsewhere in the Governing Documents, the Community Association Act, or by other applicable laws and ordinances.

15.6. **Non-Liability**. The Association, officers, or Members of the Association shall not be liable to any Unit Owner, lessee, tenant, member or other individual for a mistake in judgment, or for any negligence or non-feasance arising in connection with the performance or non-performance of duties under the Governing Documents or the Community Association Act.

15.7. **Arbitration; Mediation**. The Association may, by rule or resolution, establish procedures for mandatory mediation or arbitration to settle disputes between and among the Association and Unit Owners. Any such rule or resolution shall operate prospectively only.

ARTICLE 16
GENERAL PROVISIONS

16.1. **Implied Rights; Board Authority**. The Association may exercise any right or privilege given to it expressly by the Governing Documents, or reasonably implied from or reasonably necessary to effectuate any such right or privilege. All rights and powers of the Association may be exercised by the Association without a vote of the membership except where applicable law or the Governing Documents specifically require a vote of the membership.

16.2. **Disclaimer of Liability**. The Association shall not be liable for any failure of services to be obtained by the Association or paid for as a Common Expense, or for personal injury or property damage caused by the elements, any Unit Owner, or any other person resulting from electricity, water, snow or ice which may leak or flow from or over any of the Property or from any pipe, drain, conduit, appliance or equipment, or any secondary or consequential damages of any type. No diminution, offset or abatement of any assessment shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs or improvements to the Property by the Association or from any action taken by the Association to comply with any law, ordinance, or with the order or directive of any governmental authority.

16.3. **Dates and Times**. In computing any period of time prescribed or allowed by the Governing Documents, the day of the act, event or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday or a state or federal holiday, in which event the period runs until the end of the next day that is not a Saturday, a Sunday or a state or federal holiday. The deadline of the last day of the period so computed shall be 5:00 P.M., Mountain Time.

16.4. **Interpretive Conflicts**. In the event of any conflict between the provisions of any of the Governing Documents, the documents shall control in the following order of authority: (1) the Declaration; (2) the Articles; (3) the Bylaws; and (4) any rule, regulation, or resolution passed pursuant to the authority of the foregoing documents.

16.5. **Severability**. All of the terms and provisions of this Declaration shall be construed together, but if any one of said terms and provisions, or any part thereof, shall at any time be held invalid, or for any reason become unenforceable, no other terms and provisions, or any part thereof, shall be thereby affected or impaired; and the Declarant, Association and Owners, their successors, heirs and assigns shall be bound by each term and provision of this Declaration, irrespective of the invalidity or enforceability of any other term or provision.

16.6. **Duration**. The covenants, conditions, restrictions and easements of this Declaration shall run with and bind the Property, and shall inure to the benefit of, and be enforceable by, the Association, the Owner of any Lot subject to this Declaration, and their respective legal representatives, heirs, successors and assigns for a term of thirty (30) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years unless terminated by two-thirds (2/3ds) of the Owners and the recordation of a notice of termination in the official records of the _____ County Recorder, State of Utah.

16.7. **Notices**. Any notice required to be sent under the provisions of this Declaration shall be deemed to have been properly sent when deposited in the U.S. Mail, postage prepaid, to the last known address of the person who is entitled to receive it. The Association may, by resolution, adopt a policy for notification via electronic communication or transmission (such as e-mail) to Unit Owners in lieu of notice by mail. In addition, the Association may require that Unit Owners maintain a current e-mail address with the Association for such purpose. The Association may, from time to time, adopt other methods for giving any notice to Owners for purposes of this Declaration or the other governing documents, provided such methods are fair and reasonable and otherwise comply with the Community Association Act.

16.8. **Gender and Grammar**. The singular, wherever used herein, shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations or individuals, men or women, shall in all cases be assumed as though in each case fully expressed.

16.9. **Waivers**. No provision contained in this Declaration shall be deemed to have been waived by reason of any failure to enforce it, irrespective of the number of violations which may occur.

16.10. **Topical Headings**. The topical headings contained in any article, section, or subsection of this Declaration are for convenience only and do not define, limit, or construe the contents of this Declaration or any provision hereof.

16.11. **Counterparts**. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

[*Signatures on following page.*]

IN WITNESS WHEREOF, the undersigned, as the Declarant herein, has hereunto set its hand this _____ day of _____, 2020.

COMPANY NAME, LLC,
a Utah limited liability company

_____
By:
Its: Manager

STATE OF UTAH)
): ss
COUNTY OF_____)

On this ___ day of _____, 2020, before me personally appeared _____ proven to me through satisfactory evidence of identification to be the person whose name was signed in my presence on the preceding or attached document.

_____
Notary Public

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

EXHIBIT B

BYLAWS

EXHIBIT C

SAMPLE AGREEMENT OF RESTRICTIVE COVENANTS

[Attached]

WHEN RECORDED, MAIL TO:

_____
_____
_____
_____

Parcel Nos. _____

AGREEMENT OF
RESTRICTIVE COVENANTS

THIS AGREEMENT OF RESTRICTIVE COVENANTS (this *"**Agreement**"*) is entered into as of _____, 2020, by and between _____, LLC, a _____ limited liability company (sometimes referred to herein as *"**Developer**"*), and _____, LLC, a _____ limited liability company (*"**Purchaser**"*). Developer and Purchaser shall sometimes be individually referred to herein as a *"**Party**"* or collectively as the *"**Parties**"*.

RECITALS

A. Developer is the owner of a certain parcel of property located in _____ (*"**City**"*), County of _____, State of _____, as more particularly described on ***Exhibit A*** attached hereto (the *"**Property**"*).

B. Developer has agreed to convey the Property to Purchaser (the "***Sale***") pursuant to that Real Estate Purchase Contract for Land between Developer and Purchaser dated _____ (as amended, the "***REPC***"). The closing date, based on the REPC, is _____ ("***Closing Date***").

C. Developer and Purchaser have agreed to place certain restrictions on the Property, which shall become effective as of closing of the Sale.

D. The Property is subject to the Amended and Restated Declaration of Covenants, Conditions, Restrictions and Grant of Easements for _____ dated _____, and recorded with the _____ County Recorder on _____, as Entry No._____, as it may be amended from time to time in accordance with the terms of the Declaration (the "***Declaration***"). The covenants set forth in this Agreement are intended to supplement the terms and conditions of the Declaration, but the remedies of this Agreement and the Declaration are non-exclusive. In certain circumstances, the covenants set forth in this Agreement may be more restrictive than those set forth in the Declaration. Developer and Purchaser intend that this Agreement has been prepared, negotiated, executed and recorded as contemplated by paragraph 7 of the Addendum No. 2 to the REPC and shall supersede the REPC as to the easements and restrictive covenants set forth herein.

AGREEMENT

NOW, THEREFORE, for and in consideration of the mutual exchange of the covenants contained herein and for other good and valuable consideration acknowledged and received this day, the parties hereby agree as follows:

1. RECITALS. The Recitals set forth above are incorporated herein as if individually set forth.

2. CONSTRUCTION OF OFFICE BUILDING.

a. Use as Office Building. Throughout the term of this Agreement, the Property shall be used continuously as an office building (the "***Office Building***") at all periods following substantial completion, subject only to the limitations of Section 2(e). Notwithstanding the provisions if this Section, Purchaser must act in accordance with and not violate any restrictions or covenants of record affecting use of the Property or Office Building, including but not limited to the Declaration.

b. Commencement of Construction. A building permit from the City for construction of the Office Building (the "***Building Permit***") shall be obtained no later than one hundred twenty (120) days following the Closing Date (the *"**Building Permit Deadline**")*. The Office Building shall be substantially completed no later than twelve (12) months following the issuance of the Building Permit (the *"**Completion Deadline**")*. "***Substantial Completion***" shall occur at the point at which the Office Building is at the level of completion where necessary approvals by public regulating authorities have been granted for occupancy. Developer may exercise its Repurchase Right in accordance with Section 2 (c) upon the failure of Purchaser to comply with either the Building Permit Deadline and/or the Completion Deadline. Purchaser's compliance with the Building Permit Deadline and the Completion Deadline shall be subject to (a) Force Majeure and to (b) unreasonable delays by _____ City in providing approvals necessary for obtaining the Building Permit or completing construction of the Office Building ("***City Delays***"), provided that Purchaser has made timely application for permits and other approvals and has diligently taken actions to obtain such permits and approvals.

c. Force Majeure and City Delays. "***Force Majeure***" shall include the following causes beyond Purchaser's reasonable control: (a) any act of God, or war or terrorism; (b) fire, earthquake, winds, flooding, other casualty; (c) industry-wide shortages of labor or materials; (d) exceptional adverse weather conditions; (e) any transport, port, or airport disruption; (f) strikes or lockouts; (g) unforeseeable acts, regulations, and rules of any governmental or supra-national bodies, authorities, or regulatory organization.. If Purchaser intends to claim the benefit of Force Majeure or City Delays, it shall, within a commercially reasonable time after the occurrence of any such event, but in no event longer than thirty (30) days: (a) notify Developer of the nature and extent of any such Force Majeure or City Delays condition, and (b) use commercially reasonable efforts to remove any such causes and resume performance under this Agreement as soon as commercially reasonable.

d. Remedies for Failure to Meet the Building Permit Deadline or the Completion Deadline. Subject to the occurrence of one or more Force Majeure or City Delays events or conditions, if Purchaser fails to meet either the Building Permit Deadline or the Completion Deadline, Developer shall have the right to repurchase the Property as provided in this Section 2 (d) (the "***Repurchase Right***"). Developer's Repurchase Right vests in Developer the option to acquire the Property from Purchaser for the purchase price paid by Purchaser at the time the Property was purchased from Developer. If Developer desires to exercise its Repurchase Right, Developer shall deliver written notice (the "***Repurchase Notice***") to Purchaser within one hundred twenty (120) days after the expiration of the Building Permit Deadline or the Completion Deadline (either, a "***Repurchase Deadline***"), and the acquisition shall occur within sixty (60) days after the date of the Repurchase Notice. Title shall be transferred by Special Warranty

Deed, subject to only such liens and encumbrances as existed as of the Sale or as are requested or agreed to in writing by Developer, and to such additional encumbrances, dedications, or other easements required by any governmental agencies for the development of the Property which may have been placed of record following the Sale. The cost of an ALTA Owners policy of title insurance shall be paid by the Purchaser and other closing costs shall be borne by the parties in accordance with customary norms for the selling of commercial real property. In the event that monetary liens exist against the Property upon closing of the repurchase, the Purchase Price shall be reduced by the outstanding sum due under such liens, excluding liens which Purchaser is contesting in good faith and has escrowed funds or provided a bond in an amount equal to the amount in dispute.

e. Continuous Use. The Office Building shall be open for business at all times other than (a) periods of renovation or reconstruction of the Office Building, provided that such renovations or reconstruction is accomplished with efficiency and promptness; and (b) periods during which a Force Majeure event or condition exists.

f. Deed Restriction. The restrictions of this Agreement shall be referenced on the Special Warranty Deed.

3. TERM OF AGREEMENT. The term of this Agreement shall extend for ten (10) years following the Closing Date and the Agreement shall terminate automatically thereafter (the "***Termination Date***"). Notwithstanding such termination, Purchaser shall remain liable for any violations of the Agreement occurring prior to the Termination Date and the provisions of this Agreement relating to remedies shall survive termination for any enforcement actions by Developer which have been brought as of the Termination Date or as may be brought thereafter.

4. APPURTENANT AND PERSONAL RIGHTS. The restrictions set forth in Section 2 above on the Property shall be binding upon Purchaser and its successors, shall be appurtenant to the Property, and shall run with the land. The rights of Developer in Section 2 shall be personal to Developer and may be exercised by Developer or its successors or assignees.

5. DEFAULT. In the event that Purchaser fails to duly complete its obligations as required in this Agreement, Developer shall be entitled to enforce against Purchaser any remedies available at law or equity, including, without limitation, the remedy of specific performance. Interest shall run on any sums in default hereunder at the rate of Twelve Percent (12%) per annum. Such remedies shall be in addition to the Repurchase Right. Developer shall be entitled to injunctive relief without the necessity of posting a bond or proving damages.

6. NOTICES. All notices, demands and requests and other communications which may be given or which are required to be given by either party to the other under this Agreement shall be in writing and shall be deemed effective and delivered either: (a) on the date personally delivered to the address of the recipient set forth below, as evidenced by written receipt therefor; (b) on the fifth (5^{th}) Business Day after being sent, by certified or registered mail postage prepaid, return receipt requested, addressed to the intended recipient at the address specified below; (c) on the second (2^{nd}) Business Day after being deposited into the custody of a nationally recognized overnight delivery service such as Federal Express Corporation, DHL Express, or United Parcel Service, addressed to the recipient at the address specified below; or (d) at the time of electronic confirmation of receipt after being sent before 5:00 p.m. local time of recipient on a Business Day by electronic mail to the email addresses set forth below for each recipient, provided that a copy is also sent by nationally recognized overnight delivery service. For purposes of this Section 6, the addresses of the parties for all notices are as follows (unless changed by similar notice in writing given by particular person whose address is to be changed):

If to Developer:

If to Purchaser:

The attorneys for each party are authorized to give any notice specified in this Agreement on behalf of their respective clients.

7. MISCELLANEOUS.

a. Entire Agreement. This Agreement, together with its exhibits, embodies the entire agreement between the parties relative to the subject matter hereof, and there is no oral or written agreement between the parties, nor any representation made by either party relative to the subject matter hereof, which is not expressly set forth herein.

b. Amendment. This Agreement may be amended only by a written instrument executed by the party or parties to be bound thereby.

c. Headings. The captions and headings used in this Agreement are for convenience only and do not in any way limit, amplify, or otherwise modify the provisions of this Agreement.

d. Time of Essence. Time is of the essence of this Agreement; however, if the final date of any period which is set out in any provision of this Agreement falls on a day which is not a Business Day, then the time of such period shall be extended to the first succeeding Business Day. The term "Business Day" means every day other than Saturdays, Sundays or other state or federal holidays or other days on which banking institutions in the State of ____ are closed.

e. Invalid Provision. If any provision of this Agreement is held to illegal, invalid or unenforceable under present or future laws, such provision shall be fully severable; this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Agreement; and, the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by such illegal, invalid, or unenforceable provision or by its severance from this Agreement.

f. Attorneys' Fees. In the event it becomes necessary for either party hereto to file suit to enforce this Agreement or any provision contained herein, the party prevailing in such suit shall be entitled to recover, in addition to all other remedies or damages as provided herein, reasonable attorneys' fees and expenses incurred in such suit.

g. Multiple Counterparts; Facsimile and .pdf Signatures. This Agreement may be executed in a number of identical counterparts which, taken together, shall constitute collectively one agreement. In making proof of this Agreement, it shall not be necessary to produce or account for more

than one such counterpart with each party's signature. In order to expedite the transaction contemplated herein, telecopied signatures or .pdf signatures sent via e-mail may be used in place of original signatures on this Agreement. Seller and Purchaser intend to be bound by the signatures on the telecopied or emailed document, are aware that the other party will rely on the telecopied or emailed signatures, and hereby waive any defenses to the enforcement of the terms of this Agreement based on the form of signature.

h. Exhibits. The exhibits and schedules attached to this Agreement and referred to herein are hereby incorporated into this Agreement by reference and made a part hereof for all purposes.

i. Construction; Independent Counsel. Developer and Purchaser each acknowledge that: (a) they have been represented by independent counsel in connection with this Agreement; (b) they have executed this Agreement with the advice of such counsel; and (c) this Agreement is the result of negotiations between the parties hereto and the advice and assistance of their respective counsel. The fact that this Agreement was prepared by Developer's counsel as a matter of convenience shall have no import or significance, and the normal rule of contractual construction and interpretation to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any amendments or exhibits hereto.

j. Jury Waiver. PURCHASER AND DEVELOPER DO HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THEIR RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, OR UNDER OR IN CONNECTION WITH THIS AGREEMENT, THE DOCUMENTS DELIVERED BY PURCHASER OR BY SELLER AT CLOSING, OR ANY COURSE OF CONDUCT, COURSE OF DEALINGS, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ANY ACTIONS OF EITHER PARTY ARISING OUT OF OR RELATED IN ANY MANNER WITH THIS AGREEMENT OR THE PROPERTY (INCLUDING WITHOUT LIMITATION, ANY ACTION TO RESCIND OR CANCEL THIS AGREEMENT AND ANY CLAIMS OR DEFENSES OTHERWISE VOID OR VOIDABLE). THIS WAIVER IS A MATERIAL INDUCEMENT FOR PURCHASER TO ENTER INTO AND ACCEPT THIS AGREEMENT AND THE DOCUMENTS DELIVERED BY SELLER AT CLOSING AND SHALL SURVIVE THE CLOSING OR TERMINATION OF THIS AGREEMENT

k. Governing Law. This Agreement shall be governed by and interpreted in accordance with the internal laws of the State of _____. The parties agree that venue shall lie in any state or federal court located within the State of _____.

[*Remainder of page intentionally left blank. Signature pages to follow.*]

IN WITNESS WHEREOF, Developer and Purchaser have executed and delivered this Agreement of Easements and Restrictive Covenants as of the date first above written.

DEVELOPER:

COMPANY,
a _____ limited liability company

_____
By:
Its:

STATE OF _____)
) ss:
COUNTY OF _____)

I HEREBY CERTIFY, that on this ____ day of _____, 2020, before me, the undersigned Notary Public of said State, personally appeared _____, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same for the purposes therein contained as the duly authorized _____ of the limited liability company.

_____
Notary Public

PURCHASER:

COMPANY,
a _____ limited liability company

By: _____

Its: _____

STATE OF _____)
) ss:
COUNTY OF _____)

On the ____ day of _____, before me personally appeared _____, proven to me through satisfactory evidence of identification to be the person whose name was signed in my presence on the preceding or attached document.

_____
Notary Public

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

EXHIBIT D

LIST OF SALT LAKE CITY APPLICATIONS

Applications

All applications must be submitted on-line. **MAILED APPLICATIONS WILL NOT BE PROCESSED.** Follow our step-by-step guide to learn how to submit your application online.

- Administrative Interpretation
- Alley Vacation/Closure
- Annexation
- Appeal of a Decision
- Conditional Use
- Conservation District
- Design Review
- Determination of Nonconforming Use
- HP: Demolition Non-Contributing Structure
- HP: Demolition Contributing Building
- HP: Demolition Landmark Site
- HP: Designation
- HP: Economic Hardship
- HP: Major Alterations
- HP: Minor Alterations
- HP: New Construction
- HP: Relocation
- Master Plan Amendment
- Mitigation of Residential Housing Loss
- Planned Development
- Street Closure
- Subdivision / Condo: Final Plat
- Subdivision: Lot Line Adjustment
- Subdivision: Lot / Parcel Consolidation
- Subdivision: Preliminary Condominium
- Subdivision: Preliminary Plat
- TSA Development Review
- Variance
- Zoning Amendment
- Zoning Verification

EXHIBIT E

SALT LAKE CITY ZONING AMENDMENT APPLICATION

[Attached]

Zoning Amendment

SALT LAKE CITY PLANNING

☐ Amend the text of the Zoning Ordinance ☐ Amend the Zoning Map

OFFICE USE ONLY		
Received By:	Date Received:	Project #:

Name or Section/s of Zoning Amendment:

PLEASE PROVIDE THE FOLLOWING INFORMATION

Address of Subject Property (or Area):

Name of Applicant:	Phone:

Address of Applicant:

E-mail of Applicant:	Cell/Fax:

Applicant's Interest in Subject Property:

☐ Owner ☐ Contractor ☐ Architect ☐ Other:

Name of Property Owner (if different from applicant):

E-mail of Property Owner:	Phone:

Please note that additional information may be required by the project planner to ensure adequate information is provided for staff analysis. All information required for staff analysis will be copied and made public, including professional architectural or engineering drawings, for the purposes of public review by any interested party.

AVAILABLE CONSULTATION

If you have any questions regarding the requirements of this application, please contact Salt Lake City Planning Counter at zoning@slcgov.com prior to submitting the application.

REQUIRED FEE

Map Amendment: filing fee of **$1,075** plus **$121** per acre in excess of one acre
Text Amendment: filing fee of **$1,075**, plus fees for newspaper notice.
Plus, additional fee for mailed public notices. Noticing fees will be assessed after the application is submitted.

SIGNATURE

➔ If applicable, a notarized statement of consent authorizing applicant to act as an agent will be required.

Signature of Owner or Agent:	Date:

Updated 8/21/2021

ACKNOWLEDGEMENT OF RESPONSIBILITY

This is to certify that I am making an application for the described action by the City and that I am responsible for complying with all City requirements with regard to this request. This application will be processed under the name provided below. By signing the application, I am acknowledging that I have read and understood the instructions provided by Salt Lake City for processing this application. The documents and/or information I have submitted are true and correct to the best of my knowledge. I understand that the documents provided are considered public records and may be made available to the public. I understand that my application will not be processed until the application is deemed complete by the assigned planner from the Planning Division. I acknowledge that a complete application includes all of the required submittal requirements and provided documents comply with all applicable requirements for the specific applications. I understand that the Planning Division will provide, in writing, a list of deficiencies that must be satisfied for this application to be complete and it is the responsibility of the applicant to provide the missing or corrected information. I will keep myself informed of the deadlines for submission of material and the progress of this application. I understand that a staff report will be made available for my review prior to any public hearings or public meetings. This report will be on file and available at the Planning Division and posted on the Division website when it has been finalized.

APPLICANT SIGNATURE		
Name of Applicant:	Application Type:	
Mailing Address:		
Email:	Phone:	Fax:
Signature:	Date:	

AFFIRMATION OF SUFFICIENT INTEREST

I hereby affirm that I am the fee title owner of the below described property or that I have written authorization from the owner to pursue the described action.

FEE TITLE OWNER SIGNATURE	
Name of Owner:	
Mailing Address	Street Address:
Signature:	Date:

Legal Description of Subject Property:

The following shall be provided if the name of the applicant is different than the name of the property owner:

1. If you are not the fee owner attach a copy of your authorization to pursue this action provided by the fee owner.
2. If a corporation is fee titleholder, attach copy of the resolution of the Board of Directors authorizing the action.
3. If a joint venture or partnership is the fee owner, attach a copy of agreement authorizing this action on behalf of the joint venture or partnership
4. If a Home Owner's Association is the applicant than the representative/president must attaché a notarized letter stating they have notified the owners of the proposed application. A vote should be taken prior to the submittal and a statement of the outcome provided to the City along with the statement that the vote meets the requirements set forth in the CC&Rs.

Be advised that knowingly making a false, written statement to a government entity is a crime under Utah Code Chapter 76-8, Part 5. Salt Lake City will refer for prosecution any knowingly false representations made pertaining to the applicant's interest in the property that is the subject of this application.

Updated 4/19/22

SUBMITTAL REQUIREMENTS

Staff Review

1. **Project Description** (please electronically attach additional sheets. See Section 21A.50 for the Amendments ordinance.)

☐ ☐ A statement declaring the purpose for the amendment.

☐ ☐ A description of the proposed use of the property being rezoned.

List the reasons why the present zoning may not be appropriate for the area.

☐ ☐ Is the request amending the Zoning Map?
If so, please list the parcel numbers to be changed.

☐ ☐ Is the request amending the text of the Zoning Ordinance?
If so, please include language and the reference to the Zoning Ordinance to be changed.

WHERE TO FILE THE COMPLETE APPLICATION

Apply online through the **Citizen Access Portal**. There is a **step-by-step guide** to learn how to submit online.

INCOMPLETE APPLICATIONS WILL NOT BE ACCEPTED

_____ I acknowledge that Salt Lake City requires the items above to be submitted before my application can be processed. I understand that Planning will not accept my application unless all of the following items are included in the submittal package.

Updated 8/21/2021

EXHIBIT F

SALT LAKE CITY SUBDIVISION PLAT APPLICATION

[Attached]

Preliminary Subdivision Plat

SALT LAKE CITY PLANNING

☐ **New Lots** ☐ **Amendment**

OFFICE USE ONLY			
Project #:	Received By:	Date Received:	Zoning:

Proposed Subdivision Name:

PLEASE PROVIDE THE FOLLOWING INFORMATION

Property Address(s):

Name of Applicant:	Phone:

Address of Applicant:

E-mail of Applicant:	Cell/Fax:

Applicant's Interest in Subject Property:

☐ Owner ☐ Engineer ☐ Architect ☐ Other:

Name of Property Owner (if different from applicant):

E-mail of Property Owner:	Phone:

Please note that additional information may be required by the project planner to ensure adequate information is provided for staff analysis. All information required for staff analysis will be copied and made public, including professional architectural or engineering drawings, for the purposes of public review by any interested party.

WHERE TO FILE THE COMPLETE APPLICATION

Apply online through the Citizen Access Portal. There is a step-by-step guide to learn how to submit online.

REQUIRED FEE

Filing fee of **$397** plus **$121** per lot proposed on the plat.
Plus, additional fee for required public notices

SIGNATURE

If applicable, a notarized statement of consent authorizing applicant to act as an agent will be required.

Signature of Owner or Agent:	Date:

Updated 1/14/22

ACKNOWLEDGEMENT OF RESPONSIBILITY

This is to certify that I am making an application for the described action by the City and that I am responsible for complying with all City requirements with regard to this request. This application will be processed under the name provided below. By signing the application, I am acknowledging that I have read and understood the instructions provided by Salt Lake City for processing this application. The documents and/or information I have submitted are true and correct to the best of my knowledge. I understand that the documents provided are considered public records and may be made available to the public. I understand that my application will not be processed until the application is deemed complete by the assigned planner from the Planning Division. I acknowledge that a complete application includes all of the required submittal requirements and provided documents comply with all applicable requirements for the specific applications. I understand that the Planning Division will provide, in writing, a list of deficiencies that must be satisfied for this application to be complete and it is the responsibility of the applicant to provide the missing or corrected information. I will keep myself informed of the deadlines for submission of material and the progress of this application. I understand that a staff report will be made available for my review prior to any public hearings or public meetings. This report will be on file and available at the Planning Division and posted on the Division website when it has been finalized.

APPLICANT SIGNATURE		
Name of Applicant:	Application Type:	
Mailing Address:		
Email:	Phone:	Fax:
Signature:	Date:	

AFFIRMATION OF SUFFICIENT INTEREST

I hereby affirm that I am the fee title owner of the below described property or that I have written authorization from the owner to pursue the described action.

FEE TITLE OWNER SIGNATURE	
Name of Owner:	
Mailing Address	Street Address:
Signature:	Date:

Legal Description of Subject Property:

The following shall be provided if the name of the applicant is different than the name of the property owner:

1. If you are not the fee owner attach a copy of your authorization to pursue this action provided by the fee owner.
2. If a corporation is fee titleholder, attach copy of the resolution of the Board of Directors authorizing the action.
3. If a joint venture or partnership is the fee owner, attach a copy of agreement authorizing this action on behalf of the joint venture or partnership
4. If a Home Owner's Association is the applicant than the representative/president must attaché a notarized letter stating they have notified the owners of the proposed application. A vote should be taken prior to the submittal and a statement of the outcome provided to the City along with the statement that the vote meets the requirements set forth in the CC&Rs.

Be advised that knowingly making a false, written statement to a government entity is a crime under Utah Code Chapter 76-8, Part 5. Salt Lake City will refer for prosecution any knowingly false representations made pertaining to the applicant's interest in the property that is the subject of this application.

Updated 4/19/22

SUBMITTAL REQUIREMENTS

Staff Review

Please include with the application (*please attach electronically additional sheet/s if necessary*):

☐ ☐ **Project Description**
A written description of what is being proposed.

☐ ☐ **Preliminary Plat Drawing**
A digital (PDF) copy of the preliminary plat drawing. See plat content requirements on the following page.

☐ ☐ **Legal Descriptions (OPTIONAL)**
Legal descriptions should be provided with the application if the subdivision meets all of the following conditions: (1) it contains 10 or less lots, (2) does not amend an existing subdivision plat, (3) does not require public right of way improvements, and (4) the applicant *prefers* to finalize the subdivision with deeds rather than a final plat. If applicable, please include the following:

- A digital file (ex: Word or PDF) of the legal description of the current boundaries of the subject property and the legal descriptions of each of the proposed lots.

APPEAL PROCESS

➔ Any person adversely and materially affected by any final decision made by the planning director or designee may file a petition for review of the decision with the planning commission within ten (10) days after the record of decision is posted to the city's internet site.

➔ Any person adversely affected by any final decision made by the planning commission under this chapter may file a petition for review of the decision with the Appeals Hearing Officer within ten (10) days after the decision is rendered.

AVAILABLE CONSULTATION

➔ Planners are available for consultation prior to submitting this application. Please email zoning@slcgov.com if you have any questions regarding the requirements of this application.

INCOMPLETE APPLICATIONS WILL NOT BE ACCEPTED

_____I acknowledge that Salt Lake City requires the items above to be submitted before my application can be processed. I understand that Planning will not accept my application unless all of the following items are included in the submittal package.

Updated 1/14/22

THE FOLLOWING INFORMATION SHALL BE SHOWN ON THE PRELIMINARY PLAT OR IN AN ACCOMPANYING DATA STATEMENT:

1. Any subdivision that includes recordation of a final plat shall be given a name. Such subdivision names shall not duplicate or nearly duplicate the name of any subdivision in the city or county;
2. The name and address of the record owner or owners;
3. The name and address of the subdivider; if different from the recorded owner, there shall be a statement from the recorded owner authorizing the subdivider to act;
4. The name, address and phone number of the person, firm or organization preparing the preliminary plat, and a statement indicating the recorded owner's permission to file the plat;
5. The date, north direction, written and graphic scales;
6. A sufficient description to define the location and boundaries of the proposed subdivision;
7. Vicinity map showing general location of the project at a scale of 1" = 1,000' or similar.
8. The locations, names and existing widths and grades of adjacent streets;
9. The names and numbers of adjacent subdivisions and the names of owners of adjacent unplatted land;
10. The contours, at one foot (1') intervals, for predominant ground slopes within the subdivision between level and five percent (5%), and five foot (5') contours for predominant ground slopes within the subdivisions over five percent (5%). Such contours shall be based on the Salt Lake City datum. The closest city bench mark shall be used, and its elevation called out on the map. Bench mark information shall be obtained from the city engineer;
11. A grading plan, showing by appropriate graphic means the proposed grading of the subdivision;
12. The approximate location of all isolated trees with a trunk diameter of four inches (4") or greater, within the boundaries of the subdivision, and the outlines of groves or orchards;
13. The approximate boundaries of areas subject to inundation or storm water overflow, and the location, width and direction of flow of all watercourses;
14. The existing use or uses of the property, and the outline of any existing buildings and their locations in relation to existing or proposed street and lot lines, drawn to scale;
15. A statement of the present zoning and proposed use of the property, as well as proposed zoning changes, whether immediate or future;
16. Any proposed public areas;
17. Any proposed lands to be retained in private ownership for community use. When a subdivision contains such lands, the subdivider shall submit, with the preliminary plat, the name and articles of incorporation of the owner or organization empowered to own, maintain and pay taxes on such lands;
18. The approximate widths, locations and uses of all existing or proposed easements for drainage, sewerage and public utilities;
19. The approximate radius of each curve;
20. The approximate layout and dimensions of each lot;
21. The area of each lot to the nearest one hundred (100) square feet;
22. A statement of the water source;
23. A statement of provisions for sewerage and sewage disposal;
24. Preliminary indication of needed major storm drain facilities;
25. The locations, names, widths, approximate grades and a typical cross section of curbs, gutters, sidewalks and other improvements of the proposed street and access easements, including proposed locations of all underground utilities;
26. Any existing or proposed dedications, easements and deed restrictions;
27. A preliminary landscaping plan, including, where appropriate, measures for irrigation and maintenance;
28. The location of any of the foregoing improvements which may be required to be constructed beyond the boundaries of the subdivision shall be shown on the subdivision plat or on the vicinity map as appropriate;
29. If it is contemplated that the development will proceed by units, the boundaries of such units shall be shown on the preliminary plat;
30. If required by the planning director, a preliminary soil report prepared by a civil engineer specializing in soil mechanics and registered by the state of Utah, based upon adequate test borings or excavations. If the preliminary soil report indicates the presence of critically expansive soils or other soil problems which, if not corrected, would lead to structural defects, a soil investigation of each lot in the subdivision may be required. The soil investigation shall recommend corrective action intended to prevent structural damage.

Updated 1/14/22

EXHIBIT G

SALT LAKE CITY ORDINANCES GOVERNING SUBDIVISION APPROVALS

TABLE OF CONTENTS

[Attached]

TITLE 20
SUBDIVISIONS AND CONDOMINIUMS

CHAPTER 20.04
GENERAL PROVISIONS

SECTION:

CHAPTER 20.08
DEFINITIONS

SECTION:

CHAPTER 20.12
DESIGN STANDARDS AND REQUIREMENTS

SECTION:

CHAPTER 20.16
PRELIMINARY PLATS

SECTION:

CHAPTER 20.20
FINAL PLATS

SECTION:

CHAPTER 20.24
LOT LINE ADJUSTMENTS

SECTION:

CHAPTER 20.28
SUBDIVISION AMENDMENTS

SECTION:

CHAPTER 20.32
CONSOLIDATION OF PARCELS

SECTION:

CHAPTER 20.36
NOTICING REQUIREMENTS

SECTION:

CHAPTER 20.40
IMPROVEMENTS AND FLOOD CONTROL

SECTION:

CHAPTER 20.44
MODIFICATIONS OF STANDARDS AND REQUIREMENTS

SECTION:

CHAPTER 20.48
APPEALS

SECTION:

CHAPTER 20.52
ENFORCEMENT

SECTION:

CHAPTER 20.56
CONDOMINIUMS

SECTION:

EXHIBIT H

SALT LAKE CITY ORDINANCES RELATING TO DESIGN STANDARDS

[Attached]

CHAPTER 20.12

DESIGN STANDARDS AND REQUIREMENTS

SECTION:

20.12.010: GENERAL REGULATIONS AND STANDARDS:

Except where modified by the planning commission or its designee, all subdivision of land within Salt Lake City shall comply and conform with the design standards and requirements as set forth and as referred to in this section, as follows:

A. Supervision: All subdivision development work performed under this section will be allowed only when said work is performed under the supervision of the city engineer, transportation director and/or public utilities director in accordance with the approved subdivision plan, and said work is secured by a performance guarantee bond or other security device acceptable to the city attorney and mayor.

B. Preservation Of Natural Features: Trees, native ground cover, natural watercourses, and topography shall be preserved when possible, and the subdivision shall be so designed as to prevent excessive grading and scarring of the landscape in conformance with this title.

C. Hazardous Areas To Be Fenced: All areas of the subdivision or features adjacent to the subdivision, which present a potential threat to the public safety shall be fenced with a six foot (6') nonclimbable fence or acceptable alternative, as required by the planning commission or its designee. Such hazardous areas may include, but are not limited to, rivers and streams, canals, cliffs, ravines, railroad rights of way, and steep slopes. Required fencing shall be constructed and included as part of the subdivision improvements and shall be bonded.

D. Buildable Lots: All subdivisions shall result in the creation of lots which are developable and capable of being built upon, unless a different purpose for the lot is clearly intended and approved by the planning commission or its designee. No subdivision shall create lots, and no building permit shall be issued for any lots which would make improvements and services impractical due to size, shape, steepness of terrain, location of watercourses, problems of sewerage or driveway grades, or other physical conditions.

E. Access To Public Streets:

1. All lots or parcels created by the subdivision of land shall have access to a public street improved to standards required by this title, unless a private street or modified standards are approved by the planning commission as part of a planned development. Private streets shall not be permitted unless the planning commission finds that the most logical development of land requires that lots be created which are served by a private street or other means of access.

2. As part of the application for any subdivision proposing private streets, the subdivider shall provide for review by the city engineer the following:

a. A street development plan showing the alignment, width, grades, design, and material specifications; the topography and means of access to each lot; drainage; and, utility easements for servicing the lots served by such private street.

b. A plan providing for future ownership and maintenance of said street together with payment of taxes and other liability thereon.

3. After review and favorable recommendation by the city engineer, the planning commission may include such approved street plans as part of its recommendations to the mayor. Construction of the private street or access shall be completed prior to occupancy of any building on lots served by a private street. However, if finished grading has been completed and stabilized to the city engineer's satisfaction, the subdivider may post a cash bond equal to the cost of completing the street, as determined by the city engineer, in a form approved by the city attorney to assure the earliest possible completion of said street. The bond may be posted if, and only if, the street is stabilized and made passable until such time as the completion of the street can be accomplished.

F. Landscaping:

1. A landscaped area shall be required in all residential subdivisions and may be required in nonresidential subdivisions. Said landscaping shall be located either within the nonpaved portion of the street right of way, or within a dedicated landscaping easement, not less than five feet (5') wide, adjacent to the street. The location of the landscaping shall be specified by the planning commission or its designee. The type of landscaping and street trees shall be selected, installed, and maintained in accordance with standard specifications prepared by Salt Lake City.

2. Whenever, in the opinion of the planning commission or its designee, the cuts and fills created by the subdivision are of sufficient size or visibility to demand special treatment, the subdivider shall be required to landscape such areas with suitable permanent plant materials and to provide for their maintenance.

G. Utilities And Easements:

1. All utilities shall be provided through underground services.

2. Easements for utility and drainage purposes shall be provided within the subdivision as required by the planning commission or its designee. However, in no event shall such easement be less than five feet (5') in width when proposed along the front lot line.

H. Watercourses: The subdivider shall dedicate a right of way for storm drainage conforming substantially with the lines of any natural watercourse or channel, stream, creek, or floodplain that enters or traverses the subdivision.

I. Block Design:

1. Blocks shall normally have sufficient width for an ultimate layout of two (2) tiers of lots of the size required by the provisions of the zoning and subdivision ordinances of Salt Lake City.

2. Blocks shall not exceed the following perimeter measurements: Two thousand four hundred (2,400) linear feet for zoning districts with minimum lot sizes that range from no minimum up to and including ten thousand (10,000) square feet, and; three thousand (3,000) linear feet for zoning districts with a minimum lot size greater than ten thousand (10,000) square feet.

J. Reservation Of Land For Park And Recreation Purposes: Pursuant to the recreation or parks elements, plans or standards set forth in the master plan, as a condition of final subdivision approval the subdivider shall be required to reserve land for park and recreation purposes according to the following standards:

1. For subdivisions of twenty five (25) lots or more, including contiguous land owned or controlled by subdivider or landowner, the subdivider shall reserve land for two (2) years for public purchase at a minimum ratio of one-fourth ($^{1}/_{4}$) acre of land per twenty five (25) lots in the subdivision or five percent (5%) of the total area in the subdivision, whichever is greater.

2. All land to be reserved for park or recreational purposes shall be found to be suitable by the planning commission or its designee and the public services department as to location, parcel size, and topography for the park and recreation purpose for which it is indicated in the master plan, or as determined by the planning commission or its designee. Such purpose may include active recreation facilities such as playgrounds, play fields, pedestrian or bicycle paths, or open space areas of particular natural beauty, including canyons, hilltops, and wooded areas to be developed or left in their natural state.

3. At the time of approval of the final subdivision plat, the city may specify when development of a park or recreation facility is scheduled to begin.

K. Connectivity:

1. Public Accessways:

a. The city shall require within the development site the improvement of accessways for pedestrian and bicyclist use to connect the development site to adjacent cul-de-sacs or to an adjacent site that is undeveloped, publicly owned, or developed with an accessway that connects to the subject site.

2. Street Connectivity Standards:

a. The proposed subdivision shall include street connections to any streets that abut, are adjacent to, or terminate at the subdivision site. The proposed development shall also include street connections in the direction of all existing or planned streets adjacent to the development site as determined by the planning director.

b. The proposed development shall include streets that extend to undeveloped or partially developed land that is adjacent to the development site or that is separated from the development site by a drainage channel, transmission easement, survey gap, or similar property condition. The streets shall be in locations that will enable adjoining properties to connect to the proposed development's street system.

3. Cul-De-Sacs:

a. Except for streets that are less than one hundred fifty feet (150') long all streets that terminate shall be designed as a cul-de-sac bulb or other design acceptable to the transportation director in order to provide an emergency vehicle turnaround.

b. Public accessways to provide safe circulation for pedestrians, bicyclists and emergency vehicles shall be required from a cul- de-sac or emergency vehicle turnaround, unless the subdivider adequately demonstrates that a connection cannot be made because of the existence of one or more of the following conditions:

(1) Physical conditions preclude development of the connecting street. Such conditions may include, but are not limited to, topography or likely impact to natural resource areas such as wetlands, ponds, streams, channels, rivers, lakes or upland wildlife habitat area, or a resource on the national wetland inventory or under protection by state or federal law.

(2) Buildings or other existing development on adjacent lands, including previously subdivided but vacant lots or parcels, physically preclude a connection now or in the future, considering the potential for redevelopment. (Ord. 7-14, 2014)

20.12.020: LOT DESIGN STANDARDS:
The size, shape and orientation of lots in a subdivision shall be appropriate to the location of the proposed subdivision and to the type of development contemplated. The following principles and standards shall be observed:

A. Minimum Area; Size: The minimum area and dimensions of all lots shall conform to the requirements of the zoning ordinances of Salt Lake City for the zoning district in which the subdivision is located.

B. Side Lot Lines: The side lines of all lots, so far as possible, shall be designed to be at right angles to the street which the lot faces, or approximately radial to the center of curvatures, if such street is curved. Side lines of lots shall be designed to be approximately radial to the center of curvature of a cul-de-sac on which the lot faces.

C. Width: The minimum lot width shall conform to the requirements of the zoning district in which the proposed subdivision is

located.

D. Corner Lots: Corner lots have more than one side which must maintain required front yard setbacks, and therefore shall be platted wider than interior lots in order to permit conformance with the required street setback requirements of the zoning ordinance.

E. Remnants: No remnants of property shall be left in the subdivision which do not conform to the lot requirements or are not required or more suitable for designation as common open space, private utility, or other purpose.

F. Double Frontage Lots: Lots other than corner lots, having double frontage shall not be approved except where necessitated by topographic or other unusual conditions.

G. Developable Area Limitation:

1. The planning commission or its designee shall review each proposed foothill subdivision and, using "ten foot averaging", shall determine the extent of significant steep slopes within the subdivision. The planning commission or its designee shall require all such undevelopable portions of proposed subdivisions to be identified by placement of a development limit line and legal description upon the final plat. Such limitation shall also be made a part of the subdivision restrictive covenants. In addition to protecting significant steep slopes, development limit lines may also be established to protect natural vegetation, special natural topographic features, faults, or unique views.

2. Significant steep slopes identified by development limit lines on a subdivision plat shall be designated as undevelopable area. Said slopes if retained within the subdivision, shall be designated and maintained as common area and shall be protected from subsequent alteration or encroachment by a vegetation and open space preservation easement granted to Salt Lake City by dedication on the subdivision plat. In no event shall roads traverse such slopes.

3. Undevelopable area shall not be used to determine the minimum lot size as required by the underlying zone, unless specifically approved by the planning commission through the planned development review process.

4. For independently owned parcels in the foothills residential zoning districts that do not meet the minimum project size for a planned development per the zoning ordinance, the planning commission or its designee may count slopes over thirty percent (30%) toward meeting the minimum zoning required lot area of the underlying zone where the planning commission finds that:

a. The parcel fronts on an existing dedicated public street.

b. The parcel has a minimum of one thousand five hundred (1,500) square feet of net buildable area. The net buildable area shall not include any areas of thirty percent (30%) or greater slope or the required zoning setbacks or the portion of the transitional area that lies within the required ten foot (10') minimum setback or twenty foot (20') average setback from the proposed development limit line, as defined by the Salt Lake City zoning ordinance.

c. The parcel has city sewer and water services that are located or can be extended to access the lot directly from the street.

d. The applicant must present a construction plan, acceptable to the planning director, which demonstrates the ability to manage staging for construction in a manner that will not impact transitional or steep slope areas.

e. The proposed development on the parcel is compatible with the surrounding neighborhood and will not have a material net cumulative adverse impact on the neighborhood or the city as a whole.

5. Once established on the subdivision plat, the development limit line shall be delineated on all building permit site plans and shall be staked in the field prior to construction on any lot affected by the development limit line.

H. Solar Oriented Requirements: For subdivisions with twenty five (25) or more single-family residential lots at least fifty percent (50%) of lots less than fifteen thousand (15,000) square feet, upon which detached single-family dwelling units are planned for construction, shall conform to the definition of "solar oriented lot" in order to preserve the potential for usage of solar energy systems.

1. Street Layout: Where, as determined by the planning director, topographic, environmental, and soil conditions, and existing street configurations permit, the predominant pattern of new streets in subdivisions subject to solar oriented requirements shall be oriented within thirty degrees (30°) of east-west orientation.

2. Modifications: Where unusual topographic, environmental, soil, and similar conditions exist that, as determined by the planning director, make compliance with these provisions either physically or economically infeasible, the planning director may modify the solar oriented requirements. However, the modifications shall be the minimum necessary and shall maintain overall solar access in the subdivision. (Ord. 7-14, 2014)

20.12.030: STREET DESIGN STANDARDS:

The following minimum standards and design criteria shall apply unless deemed unwarranted by written recommendation of the city engineer and transportation division director. Said standards and criteria shall be supplemented by other applicable existing engineering and construction requirements and standards as specified by the city engineering and transportation divisions.

A. General:

1. The subdivision design shall conform to the pattern of major streets as designated on the major street plan map of the city transportation master plan. Whenever a subdivision fronts on a street so designated, that street shall be platted and dedicated by the subdivider in the location and width so indicated.

2. Where higher standards have not been established as specified in subsection A1 of this section, all streets and arterials shall be platted according to the transportation division's standard for "Typical Street And Right Of Way Cross Sections" (diagram E1.a1, or its successor, available from the transportation division), except where it can be shown by the subdivider, to the satisfaction of the planning commission, that the topography or the small number of lots served and the probable future traffic development are such as to unquestionably justify a lesser standard. A planned development, if designated with a comprehensive circulation and parking

system including separate pedestrianways, may justify modification of standards. Higher standards may be required where streets are to serve commercial or industrial property or where warranted by probable traffic conditions.

3. The street pattern in the subdivision shall be in general conformity with a plan for the most advantageous development of adjoining areas and the entire neighborhood or district. The following principles shall be observed:

a. Where appropriate to the design and terrain, proposed streets shall be continuous and in alignment with existing planned or platted streets, or, if offset, streets shall be offset a minimum of one hundred feet (100') between centerlines of intersecting local and residential streets and a minimum of four hundred feet (400') between centerlines of intersecting collector and arterial streets.

b. Proposed streets shall be extended to the boundary lines of the land to be subdivided or proposed as part of a subdivision master plan, unless prevented by topography or other physical conditions, or unless, in the opinion of the planning commission or its designee, such extension is not desirable for the coordination of the subdivision with the existing layout or the most advantageous future development of adjacent tracts.

c. Where streets extend to the boundary of the property, resulting dead end streets may be approved with a temporary turnaround of a minimum forty five foot (45') radius. In all other cases, a permanent turnaround shall conform to specifications in subsection G, "Turnaround", of this section or have a design otherwise approved by the transportation division.

d. Proposed streets shall intersect one another as nearly at right angles as topography and other limiting factors of good design permit. "T" intersections rather than "cross" intersections shall be used wherever possible for local streets.

e. Public alleys shall not normally be permitted in subdivisions.

4. Subdivisions adjacent to arterials shall be designed as specified in the master plan or by the planning commission or its designee. The following principles and standards shall be observed:

a. Street design shall have the purpose of making adjacent lots, if for residential use, desirable for such use by cushioning the impact of heavy traffic and of minimizing the interference with traffic on arterials.

b. The maximum block size established in subsection 20.12.010I of this chapter shall be the primary factor in determining the allowable number of intersecting streets along arterials.

c. When the rear of any lot borders an arterial, the subdivider may be required to execute and deliver to the city an instrument, deemed sufficient by the city attorney, prohibiting the right of ingress and egress from said arterial to said lot, and a legal document sufficient to guarantee maintenance of said landscaping.

B. Street Grades: Curves and sight distances shall be subject to approval by the city engineering division, to ensure proper drainage and safety for vehicles and pedestrians. The following principles and standards shall be observed:

1. Grades of streets shall be not less than 0.5 percent and not greater than ten percent (10%). Maximum grade applies at the street centerline. Short runs of steeper grades may be permitted by the planning commission or its designee after review and no objections from the fire department, transportation division, and engineering division.

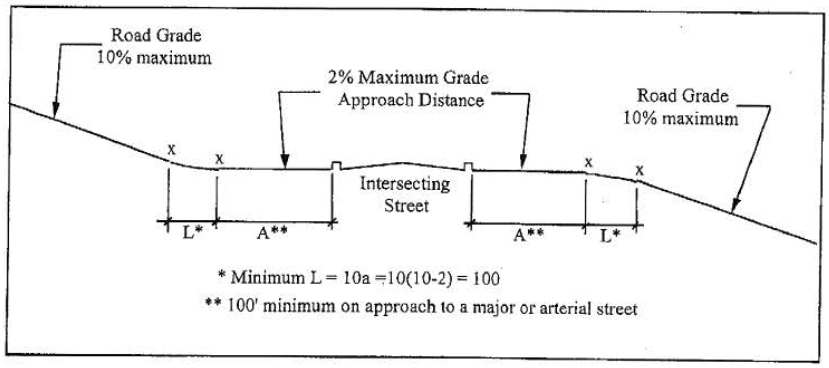
C. Vertical Alignment Of Nonintersecting Streets: Transition curves over crests of hills shall be designed to provide both a smooth transition from upward movement to minimize potential roller coaster effect and to provide safe stopping sight distance at all times. The stopping sight distance is the distance required to safely stop a vehicle after viewing an object calculated on a formula set forth in standards adopted by the transportation division. The height of the eye shall be set at 3.5 feet and the height of the object at six inches (6") above the surface of the road. Local streets shall be designed for a thirty (30) miles per hour minimum design speed providing for a minimum "K" value for stopping sight distance for crest curves of 28 and for sag curves of 35. Collector streets shall be designed for forty (40) miles per hour minimum design speed with a minimum "K" value for stopping sight distance for both crest and sag curves of 55.

D. Vertical Alignment At Street Intersections: Transition curves shall be required to provide a smooth transition from road grade to intersections. For an approach distance ("A") from each edge of the intersecting street line, the grade may not exceed two percent (2%). The minimum length of the approaches ("A") and transition curves ("L") shall be calculated upon the formulas below:

A	=	The minimum approach distance required where grade may not exceed 2 percent from the curb line of the intersecting street. Said distance of "A" shall be not less than 35 feet for intersections with local streets and not less than 100 feet for intersections with major or arterial streets.
L	=	The minimum transition curve length required between points of tangency, "X", where L = 10(a), "a" being the difference between the grade of the road less the grade of "A".

FIGURE 1

FIGURE 1



E. Intersection Site Distance: Intersections shall be planned and located to provide as much sight distance as possible. In achieving a safe road design, as a minimum, there shall be sufficient corner sight distance for the driver on the approach roadway to cross the intersecting street without requiring approaching traffic to reduce speed. Such corner sight distance is a field of vision which shall be measured from a point on the approach roadway at least fifteen feet (15') from the edge of the intersecting roadway pavement at a height of 3.5 feet on the approach roadway. The minimum corner sight distance for local streets (30 miles per hour design speed) shall be three hundred fifty feet (350'). For collector streets (40 miles per hour design speed) the minimum corner sight distance shall be four hundred fifty feet (450').

F. Horizontal Alignment Of Streets: In addition to the specific street design standards set forth above, horizontal alignment shall be subject to the following criteria:

1. Consistent with topography, alignments shall be as straight as possible.

2. Maximum curvatures shall be avoided whenever possible.

3. Consistent patterns of alignment shall be sought. Sharp curves at the end of long tangents or at the end of long flat curves shall be avoided.

4. Short lengths of curves shall be avoided even for very small deflection angles.

5. Flat curvatures shall be provided on long fills.

6. Compound circular curves with large differences in radii shall be avoided.

7. Direct reverse curves shall be avoided; a tangent shall be used between them.

8. "Broken back curves" (2 curves in the same direction on either side of a short tangent or large radius curve) shall be avoided.

9. To effectuate the above general criteria, the minimum curve centerline radii for local streets and collector streets shall be one hundred feet (100') and one hundred fifty feet (150'), respectively. The maximum allowable degree of curvature shall be twenty three degrees (23°) for local streets and 12.5 degrees for collector streets.

G. Turnaround: Cul-de-sacs in residential areas should be no longer than four hundred feet (400') (measured from centerline of intersecting street to radius point of turnaround) and shall have a minimum of forty five feet (45') curb radius. Cul-de-sacs in commercial or industrial areas should be no longer than six hundred fifty feet (650') and should have a minimum of sixty foot (60') curb radius. Other cul-de-sac lengths or turnaround configurations may be approved by the transportation division director and planning division director upon their favorable recommendation that the alternative provides equal or better convenience, access, and service in coordination with the city fire and life safety examiner and the fire department for emergency services.

H. Street Lighting: Lighting shall comply with the policies and standards outlined in the Salt Lake City street lighting master plan.

I. Curb, Gutter, And Sidewalks: The following principles and standards shall apply to the design and installation of curbs, gutters, sidewalks, and pedestrianways:

1. Vertical curbs and gutters as shown on the city's standard detail drawings shall be required in all subdivisions except for the exceptions specified in subsections I2, I3, or I4 of this section.

2. Sidewalks shall be required on at least one side of the street in any subdivision. In residential subdivisions the planning commission or designee may require a sidewalk on both sides of a street.

3. Sidewalks shall normally be located within the street right of way and shall be a minimum of four feet (4') wide in residential zoning districts when adjacent to a park strip; five feet (5') wide in residential zoning districts when the sidewalk is directly adjacent to the back of curb; six feet (6') wide in commercial, manufacturing, downtown, and gateway districts unless specified otherwise in those districts; eight feet (8') wide in the central business district, and; ten feet (10') wide along Main Street in the central business

district. The planning commission or its designee may require additional width subject to a pedestrian impact study as determined by the transportation division director.

4. For lots and public strips containing existing trees with a trunk diameter of four inches (4") or greater, the planning division shall consult the city forester for recommendations on locating curb cuts for driveways and preservation of such trees.

J. Protection Strips: Where subdivision streets create frontage for contiguous property owned by others, the subdivider may, upon approval by the planning commission or its designee, create a protection strip not less than one foot (1') in width between said street and adjacent property, to be deeded into joint ownership between the city and subdivider. Such a lot requires an agreement from the subdivider contracting to deed to the owners of the contiguous property the one foot (1') or larger protection strip lot for a consideration named in the agreement, such consideration to be not more than the cost of street improvements properly charged to the contiguous property as determined by the city engineering division in their estimate of cost of improvements for the subdivision. One copy of this agreement shall be submitted as approved by the city attorney to the planning commission or its designee prior to the approval of the final plat. Jointly owned protection strip lots shall not be permitted at the end of or within the boundaries of a public street, or proposed street, or within an area, or abutting an area, intended for future public use.

K. Traffic Report: New subdivisions have traffic impacts on existing street systems that may or may not be adverse in nature. The city may require the subdivider to provide a detailed traffic report of the effects and impacts of the proposed development. This report shall detail the expected number of trips to be generated, the type of vehicles expected, and the times of day that the most severe impact can be expected. It shall also detail the effect on street capacity by the development, as well as nearby intersections that will be impacted by the development's traffic as may be designated by the transportation division director. (Ord. 7-14, 2014)

20.12.040: INSPECTION AND ENFORCEMENT:

The city engineering division will have responsibility for inspection and enforcement of subdivision design standards and requirements of this chapter. Where it is found by inspection that conditions are not substantially as stated or shown in the approved subdivision plans, the city engineering division shall stop further work until approval is obtained for an amended subdivision plan. (Ord. 7-14, 2014)

EXHIBIT I

SALT LAKE CITY ORDINANCES RELATING TO PRELIMINARY PLATS

[Attached]

CHAPTER 20.16

PRELIMINARY PLATS

SECTION:

20.16.005: APPLICABILITY:
This chapter applies to all subdivisions and subdivision amendments as defined in this title. (Ord. 7-14, 2014)

20.16.010: FILING OF PLAT:
The subdivider shall file with the planning division digital and paper preliminary plat drawings, a written explanation of the proposed subdivision or subdivision amendment and such other data as may be required of the preliminary plat application of each proposed subdivision. (Ord. 7-14, 2014)

20.16.020: FEES:
At the time a preliminary plat is filed, the subdivider shall pay an application fee according to the adopted Salt Lake City consolidated fee schedule. (Ord. 7-14, 2014)

20.16.030: PREPARATION OF PLAT; CERTIFICATION OF BOUNDARIES:
The subdivider shall cause the preliminary plat of the land proposed to be subdivided to be prepared by a person authorized by state law to prepare such a plat. (Ord. 7-14, 2014)

20.16.040: SCALE OF PLAT; REPRODUCTION:
The preferred scales are one inch equals twenty feet (1" = 20') or one inch equals thirty feet (1" = 30'), but in no cases shall the scale be smaller than one inch equals one hundred feet (1" = 100'). The plat shall be clearly and legibly reproduced. (Ord. 7-14, 2014)

20.16.050: VICINITY SKETCH:
A vicinity sketch at a scale of one thousand feet (1,000') or more to the inch shall be drawn on the preliminary plat. It shall show the street and tract lines and names of all existing subdivisions, and the outline and acreage of parcels of land adjacent to the proposed subdivision. (Ord. 7-14, 2014)

20.16.060: INFORMATION ON PLAT OR IN DATA STATEMENT:
A. The following information shall be shown on the preliminary plat or in an accompanying data statement:

1. Any subdivision that includes recordation of a final plat shall be given a name. Such subdivision names shall not duplicate or nearly duplicate the name of any subdivision in the city or county;

2. The name and address of the record owner or owners;

3. The name and address of the subdivider; if different from the recorded owner, there shall be a statement from the recorded

owner authorizing the subdivider to act;

4. The name, address and phone number of the person, firm or organization preparing the preliminary plat, and a statement indicating the recorded owner's permission to file the plat;

5. The date, north direction, written and graphic scales;

6. A sufficient description to define the location and boundaries of the proposed subdivision;

7. The locations, names and existing widths and grades of adjacent streets;

8. The names of adjacent subdivisions and the names of owners of adjacent unplatted land;

9. The contours, at one foot (1') intervals, for predominant ground slopes within the subdivision between level and five percent (5%), and five foot (5') contours for predominant ground slopes within the subdivisions over five percent (5%). Such contours shall be based on the Salt Lake City datum. The closest city bench mark shall be used, and its elevation called out on the map. Bench mark information shall be obtained from the city engineer;

10. A grading plan, showing by appropriate graphic means the proposed grading of the subdivision;

11. The approximate location of all isolated trees with a trunk diameter of four inches (4") or greater, within the boundaries of the subdivision, and the outlines of groves or orchards;

12. The approximate boundaries of areas subject to inundation or stormwater overflow, and the location, width and direction of flow of all watercourses;

13. The existing use or uses of the property, and the outline of any existing buildings and their locations in relation to existing or proposed street and lot lines, drawn to scale;

14. A statement of the present zoning and proposed use of the property, as well as proposed zoning changes, whether immediate or future;

15. Any proposed public areas;

16. Any proposed lands to be retained in private ownership for community use. When a subdivision contains such lands, the subdivider shall submit, with the preliminary plat, the name and articles of incorporation of the owner or organization empowered to own, maintain and pay taxes on such lands;

17. The approximate widths, locations and uses of all existing or proposed easements for drainage, sewerage and public utilities;

18. The approximate radius of each curve;

19. The approximate layout and dimensions of each lot;

20. The area of each lot to the nearest one hundred (100) square feet;

21. A statement of the water source;

22. A statement of provisions for sewerage and sewage disposal;

23. Preliminary indication of needed major storm drain facilities;

24. The locations, names, widths, approximate grades and a typical cross section of curbs, gutters, sidewalks and other improvements of the proposed street and access easements, including proposed locations of all underground utilities;

25. Any existing or proposed dedications, easements and deed restrictions;

26. A preliminary landscaping plan, including, where appropriate, measures for irrigation and maintenance;

27. The location of any of the foregoing improvements which may be required to be constructed beyond the boundaries of the subdivision shall be shown on the subdivision plat or on the vicinity map as appropriate;

28. If it is contemplated that the development will proceed by units, the boundaries of such units shall be shown on the preliminary plat;

29. If required by the planning director, a preliminary soil report prepared by a civil engineer specializing in soil mechanics and registered by the state of Utah, based upon adequate test borings or excavations. If the preliminary soil report indicates the presence of critically expansive soils or other soil problems which, if not corrected, would lead to structural defects, a soil investigation of each lot in the subdivision may be required. The soil investigation shall recommend corrective action intended to prevent structural damage. (Ord. 7-14, 2014)

20.16.070: STREET NAME PRINCIPLES:
The following principles shall govern street names in a subdivision:

A. Each street which is a continuation or an approximate continuation of any existing dedicated street shall be shown on the preliminary plat and shall be given the name of such existing street. When any street forms a portion of a proposed street previously ordered by the city to be surveyed, opened, widened or improved, the street shall be given the name established in said order.

B. The names of newly created streets of a noncontinuous or noncontiguous nature shall not duplicate or nearly duplicate the name of any streets in the city or county. All street names must be approved by Salt Lake County's public works addressing office.

C. The words, "street", "avenue", "boulevard", "place", "way", "court" or other designation of any street shall be spelled out in full on the plat. (Ord. 7-14, 2014)

20.16.080: ACCOMPANYING DATA STATEMENT:
Such information as cannot be conveniently shown on the preliminary plat of a subdivision shall be contained in a written statement accompanying the plat. (Ord. 7-14, 2014)

20.16.090: DISTRIBUTION OF PLAT FOR REVIEW AND COMMENT:
A. The planning director shall transmit a copy of the preliminary plat to, and request comments from, city departments and divisions that are part of the subdivision review process, and any other applicable departments or government agencies as determined by the planning director.

B. The planning director shall prepare a written report on the conformity of the preliminary plat to the provisions of any applicable zoning ordinance and all other applicable requirements of this title and other ordinances and regulations of the city.

C. The city engineer, or designee, shall prepare a written report of requirements and/or recommendations on the preliminary plat relating to the public improvement requirements of this title. (Ord. 7-14, 2014)

20.16.100: STANDARDS OF APPROVAL FOR PRELIMINARY PLATS:
All preliminary plats for subdivisions and subdivision amendments shall meet the following standards:

A. The subdivision complies with the general design standards and requirements for subdivisions as established in chapter 20.12 of this title;

B. All buildable lots comply with all applicable zoning standards;

C. All necessary and required dedications are made;

D. Water supply and sewage disposal shall be satisfactory to the public utilities department director;

E. Provisions for the construction of any required public improvements, per section 20.40.010 of this title, are included;

F. The subdivision otherwise complies with all applicable laws and regulations;

G. If the proposal is an amendment to an existing subdivision and involves vacating a street, right of way, or easement, the amendment does not materially injure the public or any person who owns land within the subdivision or immediately adjacent to it and there is good cause for the amendment. (Ord. 7-14, 2014)

20.16.110: NOTICE OF SUBDIVISION APPLICATION AND PENDING DECISION:
Prior to any administrative decision for preliminary plat approval of a proposed subdivision or subdivision amendment not involving a public street, right of way, or easement, the planning director shall provide a notice of subdivision or subdivision amendment application and pending decision in accordance with the noticing requirements in chapter 20.36 of this title. (Ord. 7-14, 2014)

20.16.120: PLANNING DIRECTOR AUTHORITY AND ACTION:
Except as may be specified elsewhere in this title, the planning director, under delegation from the planning commission, shall have decision making authority for preliminary plats and shall act on all preliminary plat applications in a timely manner. If the planning director finds that the proposed plat complies with the standards of approval for preliminary plats the director shall approve the preliminary plat. If the planning director finds that the proposed preliminary plat does not meet the requirements of the city ordinances, the director shall recommend conditional approval, refer the preliminary plat to the planning commission for a decision, or deny the application. (Ord. 7-14, 2014)

20.16.130: NOTICE OF ACTION TO SUBDIVIDER:
The subdivider shall be notified of the action taken by the planning director. (Ord. 7-14, 2014)

20.16.140: SITE PREPARATION PERMIT REQUIRED:
The planning director, or designee, upon approval of the preliminary plat, shall indicate to the subdivider whether a site preparation permit (a.k.a. site development permit), as specified in title 18, chapter 18.28 of this code, is required prior to the subdivider performing any site preparations on the proposed subdivision site. (Ord. 7-14, 2014)

20.16.150: APPEALS OF PLANNING DIRECTOR OR PLANNING COMMISSION DECISION:
Refer to chapter 20.48, "Appeals", of this title for information and regulations regarding filing an appeal of a preliminary plat decision. (Ord. 7-14, 2014)

20.16.160: COMPLIANCE WITH ALL CITY REQUIREMENTS:
Approval of the preliminary plat shall in no way relieve the subdivider of his/her responsibility to comply with all required conditions and ordinances, and to provide the improvements and easements necessary to meet all city standards. (Ord. 7-14, 2014)

20.16.170: PLANNING DIRECTOR FINAL APPROVAL OF RECORDABLE INSTRUMENT:
The planning director, or designee, shall have final approval for preliminary plats approved by them, or in the case of preliminary plat approvals issued by the planning commission is designated to execute for the planning commission, the final recordable instrument for any approved subdivision or subdivision amendment upon the planning director's or designee's satisfaction that all regulations and conditions of approval have been fulfilled. (Ord. 7-14, 2014)

20.16.180: RECORDABLE INSTRUMENT:
A. Subdivisions that obtain preliminary plat approval for more than ten (10) lots and/or include the dedication or construction of streets or other public rights of way or the construction of public improvements shall be processed as a final plat and recorded on a subdivision plat with the county recorder.

B. Subdivisions that obtain preliminary approval for ten (10) lots or less and do not involve streets, public rights of way or the

construction of public improvements may be recorded by planning division staff as a "notice of subdivision approval for ten lots or less" in the office of the county recorder, and must be accompanied by deeds that transfer ownership of the new lots. (Ord. 7-14, 2014)

20.16.190: EXPIRATION OF PRELIMINARY PLAT:
A preliminary plat approval, or conditional approval, is valid for twenty four (24) months from the issuance date of approval. If no plat, notice of subdivision approval, or other appropriate instrument has acquired the necessary final approval and been recorded within this time frame, the preliminary plat approval shall be void. For those subdivisions that require a final plat as the recording instrument, the application for final plat must be submitted within eighteen (18) months of preliminary plat approval, per section 20.20.010 of this title. (Ord. 7-14, 2014)

EXHIBIT J

SALT LAKE CITY ORDINANCES RELATING TO FINAL PLATS

[Attached]

CHAPTER 20.20

FINAL PLATS

SECTION:

20.20.010: FILING DATE FOR FINAL PLAT:
Within eighteen (18) months after the approval or conditional approval of the preliminary plat, a subdivider shall submit to the planning director a final plat prepared in conformance with the preliminary plat as approved, including conformance with any conditions attached to such approval. Subject to expiration of preliminary plats pursuant to section 20.16.190 of this title, the final plat may be approved by the mayor upon recommendation by the planning commission, the planning director, or designee. If the final plat is part of, or the result of, a city enforcement case, the applicant must complete the final plat review and record the final plat within six (6) months of preliminary approval. (Ord. 7-14, 2014)

20.20.020: DOCUMENTS AND DATA REQUIRED:
At the time a final plat of a subdivision is submitted to the city engineer, the subdivider shall submit therewith the following documents:

A. Calculation and traverse sheets, in a form approved by the city engineer, giving bearings, distances and coordinates of the boundary of the subdivision, and blocks and lots as shown on the final plat;

B. The final plat shall be accompanied by a current property title report naming the persons whose consent is necessary for the preparation and recordation of such plat and for dedication of the streets, alleys and other public places shown on the plat, and certifying that as of the date of the preparation of the report, the persons therein named are all the persons necessary to give clear title to such subdivision;

C. If a preliminary soil report was required for the preliminary plat review, a copy of that report shall be included with the final plat. The fact that a soil report has been prepared shall be noted on the final plat and the report shall be recorded as a supporting document with the plat;

D. The agreement and bonds specified in sections 20.20.040 and 20.20.050 of this chapter, or successor sections;

E. Copies of all proposed deed restrictions. (Ord. 7-14, 2014)

20.20.030: PREPARATION AND MATERIALS OF FINAL PLAT:
A. 1. Initially the plat shall be furnished as full size (24 inches x 36 inches) paper copies and/or digital copies. The final product to be used for recording shall be of typical mylar material or the common material for plats at the time. The dimension and orientation requirements for the final plat drawing shall be twenty four inches by thirty six inches (24" x 36") and not less than a one-half inch ($^1/_2$") margin, in from the outside or trim line, around the edges of the sheet. The plat shall be so drawn that the top of the sheet either faces north or west, whichever accommodates the drawing best. All feature labels and descriptions shall be oriented with the north direction on the plat.

2. The actual plat drawing shall be made on a scale large enough to clearly show all details, and the workmanship on the finished drawing shall be neat, clear cut and readable. The preferred scales are one inch equals twenty feet (1" = 20') or one inch equals thirty feet (1" = 30'), but in no cases shall the scale be smaller than one inch equals one hundred feet (1" = 100').

3. The printing or reproduction process used shall not incur any shrinkage or distortions, and the reproduced copy furnished shall be of good quality, to true dimension, clear and readable, and in all respects comparable to the original plat. The mylar plat shall be signed separately by all required and authorized parties and shall contain the information set forth in this chapter. The location of the subdivision within the city shall be shown by a small scale vicinity map inset on the title sheet.

B. The title of each sheet of such final plat shall consist of the approved name of the subdivision at the top center and lower right

hand corner of the sheet, followed by the words "Salt Lake City". Plats filed for the purpose of showing land previously subdivided as acreage shall be conspicuously marked with the words "Reversion to Acreage".

C. An accurate and complete boundary survey to second order accuracy shall be made of the land to be subdivided. A traverse of the exterior boundaries of the tract, and of each block, when computed from field measurements on the ground, shall close within a tolerance of one foot (1') to fifteen thousand feet (15,000') of perimeter.

D. The final plat shall show all survey and mathematical information and data necessary to locate all monuments and to locate and retrace all interior and exterior boundary lines appearing thereon, including bearing and distance of straight lines, and central angle, radius, and arc length of curves. Identify the basis of bearing between two (2) existing monuments.

E. All lots and blocks and all parcels offered for dedication for any purpose shall be delineated and designated with all dimensions, boundaries, size and courses clearly shown and defined in every case. Parcels offered for dedication other than for streets or easements shall be designated by letter. Sufficient linear, angular and curve data shall be shown to determine readily the bearing and length of the boundary lines of every block, lot and parcel which is a part thereof. Sheets shall be so arranged that no lot is split between two (2) or more sheets and, wherever practicable, blocks in their entirety shall be shown on one sheet. No ditto marks shall be used for lot dimensions. Lot numbers shall begin with the numeral "1" and continue consecutively throughout the subdivision with no omissions or duplications.

F. The plat shall show the right of way lines of existing and new streets with the street name and number, the width of any portion being dedicated, and widths of any existing dedications. The widths and locations of adjacent streets and other public properties within fifty feet (50') of the subdivision shall be shown. If any street in the subdivision is a continuation or an approximate continuation of an existing street, the conformity or the amount of nonconformity of such street to such existing streets shall be accurately shown.

G. All easements shall be shown by fine dashed lines. The widths of all easements and sufficient ties thereto to definitely locate the same with respect to the subdivision shall be shown. All easements shall be clearly labeled and identified.

H. If the subdivision is adjacent to a waterway, the map shall show the line of high water with a continuous line, and shall also show with a fine continuous line any lots subject to inundation by a one percent (1%) frequency flood, i.e., a flood having an average frequency of occurrence in the order of once in one hundred (100) years although the flood may occur in any year. (The 100-year floodplain is defined by the army corps of engineers.)

I. The plat shall show fully and clearly:

1. All monuments found, set, reset, replaced or removed, stated at each point or in legend. Monument caps set by surveyor must be stamped with L.S. number or surveyor and/or company name, and date. Drawings of brass caps, showing marked and stamped data for any existing monuments and the monuments to be set, shall be included on the plat;

2. Type of boundary markers and lot markers used; and

3. Other evidence indicating the boundaries of the subdivision as found on the site.

Any monument or bench mark that is disturbed or destroyed before acceptance of all improvements, shall be replaced by the subdivider under the direction of the city engineer.

J. The title sheet of the plat shall show the following information:

1. Name of the subdivision at the top center and lower right hand corner of the sheet; with location indicated by quarter section, township, range, base, and meridian;

2. Number of sheets in the lower right hand corner;

3. Name of the engineer or surveyor with the date of the survey;

4. North direction;

5. Scale of the drawing;

6. The location of the subdivision within the city shall be shown by a small scale vicinity map inset;

7. Plats filed for the purpose of showing land previously subdivided as acreage shall be conspicuously marked with the words "Reversion to Acreage";

8. The following certificates, acknowledgments and boundary descriptions:

a. Registered, professional land surveyor's "certificate of survey" together with the surveyor's professional stamp, signature, name, business address, and phone number;

b. Owner's dedication certificate (with subdivision name included);

c. Notary public's acknowledgment (with subdivision name included);

d. A boundary description of all property being subdivided, with sufficient ties to section corner, quarter corner, land corner or recorded subdivision, etc., and with reference to maps or deeds of the property as shall have been previously recorded or filed. Each reference in such description shall show a complete reference to the book and page of records of the county. The description shall also include reference to any vacated area with the vacation ordinance number indicated;

e. The tax parcel identification numbers for all parcels shown on the plat; and

f. Such other affidavits, certificates, acknowledgments, endorsements and notary seals as are required by law and by this chapter.

K. Prior to the filing of the final plat with the mayor, the subdivider shall file the necessary tax lien certificates and documents. (Ord. 7-14, 2014)

20.20.040: PUBLIC IMPROVEMENT CONSTRUCTION AGREEMENT:

A. Prior to the approval by the mayor of the final plat, and if public improvements were conditions of preliminary approval, the subdivider shall execute and file an agreement between the subdivider and the city, specifying the period within which the subdivider shall complete all public improvement work to the satisfaction of the city engineer, and providing that if the subdivider shall fail to complete the public improvement work within such period, the city may complete the same and recover the full cost and expense thereof from the subdivider's security device or, if not recovered therefrom, from the subdivider personally. The agreement shall also provide for inspection and testing of all public improvements and that the cost of such inspections and testing shall be paid for by the subdivider.

B. Such agreement may also provide the following:

1. Construction of the improvements in units or phases; or

2. An extension of time under conditions specified in such agreement. (Ord. 7-14, 2014)

20.20.050: BOND AND SECURITY REQUIREMENTS:

A. The subdivider shall file with the city engineer, together with the improvement agreement, a security device. With the consent of the city attorney, the subdivider may, during the term of the improvement agreement, replace a security device with any other type of security device. If a corporate surety performance bond and a corporate surety payment bond are used, each shall be in an amount equal to not less than one hundred percent (100%) of the estimated cost of the public improvements. If a cash bond, escrow agreement, or letter of credit is used to secure the performance and payment obligations, the aggregate amount thereof shall be not less than one hundred percent (100%) of the estimated cost of the public improvements. The estimates of the cost of the public improvements pursuant to this subsection shall be subject to the approval of the city engineer. Except as otherwise provided hereafter, each security device shall extend for at least a one year period beyond the date the public improvements are completed and accepted by the city, as determined by the city engineer, to secure the subdivider's obligations under the improvement agreement, including, without limitation, the replacement of defective public improvements.

B. In the event the subdivider fails to complete all public improvement work in accordance with the provisions of this chapter and the improvement agreement: 1) in the case of a corporate surety performance bond, the city shall have the following options, which shall be set forth in the bond: a) the city may require the subdivider's surety to complete the work, or b) the city may complete the work and call upon the surety for reimbursement; 2) in the case of a cash bond or escrow agreement, the subdivider shall forfeit to the city such portion of the money as is necessary to pay for the costs of completion; and 3) in the case of a letter of credit, the city may draw on the letter of credit to pay for the costs of completion. The subdivider shall be liable for, and the city may draw on the security device for, the city's costs and expenses incurred in realizing on the security device and otherwise pursuing its remedies hereunder and under the improvement agreement. If the amount of the security device exceeds all costs and expenses incurred by the city, the city shall release the remainder of the security device to the subdivider after the expiration of the one year period described in subsection A of this section, and if the amount of the security device shall be less than the costs and expenses incurred by the city, the subdivider shall be personally liable to the city for such deficiency.

C. The office of the city engineer shall monitor the progress of the work. Ninety (90) days following the completion and acceptance by the city (as determined by the city engineer) of all of the public improvements work and upon the receipt by the city of any lien waivers required by the city engineer and provided that the city has not received any claims or notices of claim upon the security device pursuant to section 20.20.052 of this chapter, the city engineer shall release or consent to the release of seventy five percent (75%) of the security device to the subdivider. The remaining twenty five percent (25%) shall be held for one year from the date of completion and acceptance by the city (as determined by the city engineer) of the public improvements work to make certain that the public improvements remain in good condition during that year and to secure the subdivider's other obligations under the improvement agreement. At the end of that year and upon the receipt by the city of any lien waivers required by the city engineer, and provided that the city has not received any claims or notices of claim upon the security device pursuant to section 20.20.052 of this chapter and that the public improvements remain in good condition and the subdivider has performed the subdivider's obligations under the improvement agreement, the city engineer shall release or consent to the release of the final twenty five percent (25%) of the security device to the subdivider. All sums, if any, held by the city in the form of cash shall be returned to the subdivider without interest, the interest on such money being reimbursement to the city for the costs of supervision of the account. If the security device is a corporate surety bond, copies of the partial releases from the engineer's office shall be sent to the recorder's office for inclusion with and attachment to the bond. The foregoing provisions of this subsection shall not apply to amounts required for erosion control and slope stabilization requirements, and any release with respect to such amounts shall be made as provided in subsection E of this section and in the improvement agreement.

D. A letter of credit shall be irrevocable unless otherwise expressly consented to in writing by the city engineer. All other terms of and conditions for a letter of credit shall be the same as those required for a cash bond or escrow agreement.

E. Where a subdivider is required to provide erosion control and slope stabilization facilities in a subdivision, the estimated cost of such facilities, as approved by the city engineer, shall be set forth as a separate figure in the security device. Upon the completion and acceptance by the city engineer of such facilities, and upon the receipt by the city of any lien waivers required by the city engineer, and provided that the city has not received any claims or notices of claim upon the security device pursuant to section 20.20.052 of this chapter, fifty percent (50%) of the money held as security for such facilities shall be returned to the subdivider and fifty percent (50%) shall be retained for two (2) growing seasons to ensure that growth has taken hold and to secure the subdivider's other obligations under the improvement agreement. All dead vegetation shall be replaced through replanting at the end of the second growing season. At the end of that two (2) year period and upon receipt by the city of any lien waivers required by the city engineer, and provided that the city has not received any claims or notices of claim upon the security device pursuant to section 20.20.052 of this chapter and that the erosion control and/or slope stabilization remains acceptable to the city, the city engineer shall release or consent to the release of the final fifty percent (50%) of the security device to the subdivider. All sums, if any, held by the city in the form of cash shall be returned to the subdivider without interest, the interest on such money being reimbursement to the

city for the costs of supervision of the account. If the security device is a corporate surety bond, copies of the partial release from the engineer's office shall be sent to the recorder's office for inclusion with and attachment to the bond. (Ord. 7-14, 2014)

20.20.052: SECURITY DEVICES SECURING PAYMENT RISK:
The terms of a corporate surety payment bond held by the city as a security device shall govern claims to the corporate surety by a claimant. Subsections A through E of this section shall govern claims by claimants on any security device which is a cash bond held by the city, a letter of credit, or an escrow agreement. For purposes of this section, "claim" means a request or demand by a claimant that: a) a corporate surety pay the claimant from a corporate surety payment bond or b) that the city either: 1) pay the claimant from a cash bond, or 2) make a draw request under a letter of credit or make a request for payment under an escrow agreement. For purposes of this section, "claimant" means a person who, pursuant to contract, furnished labor, materials, supplies, or equipment with respect to the public improvements. For purposes of this section, "contractor" means the person with whom the claimant has contracted to furnish labor, materials, supplies, or equipment with respect to the public improvements. For purposes of this section, "original contractor" means the person with whom the subdivider contracted to construct the public improvements.

A. The city shall be obligated to make a payment or request a payment to be made only to the extent of monies available under the security device, and shall have no duty to defend any person in any legal action relating to a claim.

B. The city shall have no obligation to a claimant under a security device until:

1. The claimant has furnished written notice to the contractor, with a copy to the original contractor, the subdivider and the city, within ninety (90) days after having last performed labor or last furnished materials, supplies or equipment included in the claim, stating, with substantial accuracy, the amount of the claim and the name of the party to whom the materials, supplies or equipment were furnished or for whom the labor was done or performed; and

2. Not having been paid within thirty (30) days after having furnished the above notice, the claimant has sent written claim to the city, with a copy to the original contractor and the subdivider, stating that a claim is being made under the security device and enclosing a copy of the previous written notice furnished to the contractor and to the city.

C. When the claimant has satisfied the conditions in subsection B of this section, the city shall, within thirty (30) days after receipt of the claim, take the following actions:

1. Send an answer to the claimant, with a copy to the original contractor and to the subdivider, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed;

2. Pay or arrange for the payment of any undisputed amounts.

D. No suit or action shall be commenced by a claimant under a security device after the expiration of one year after the date of completion of the public improvements and acceptance thereof by the city (as certified by the city engineer). Any such suit or action shall be commenced only in a court of competent jurisdiction in Salt Lake City.

E. If the subdivider provides a security device comprising a cash bond, a letter of credit or escrow agreement, the subdivider and the contractor shall be deemed to have waived any right to sue the city because of any payment or draw made by the city under or pursuant to such security device. (Ord. 7-14, 2014)

20.20.055: NO PUBLIC RIGHT OF ACTION:
The provisions of sections 20.20.040 and 20.20.050 of this chapter, or successor sections, shall not be construed to provide any private right of action on either tort, contract, third party contract or any other basis on behalf of any property holder in the subdivision as against the city or on the security device required under section 20.20.050 of this chapter or its successor in the event that the public improvements are not constructed as required. Notwithstanding the foregoing sentence, any security device obtained pursuant to section 20.20.050 of this chapter to secure payment obligations with respect to the public improvements shall provide a private right of action to any person, at any tier, who supplies labor, material or equipment with respect to the public improvements. (Ord. 7-14, 2014)

20.20.060: CITY ENGINEER REVIEW AND APPROVAL:
Upon receipt of the final plat and other data submitted therewith, the city engineer shall examine such to determine that the subdivision as shown is substantially the same as it appeared on the preliminary plat and any approved alterations thereof. If the city engineer shall determine that full conformity therewith has been made, the city engineer shall approve the plat. (Ord. 7-14, 2014)

20.20.070: APPROVAL BY PLANNING DIRECTOR:
Upon receipt of the final plat, the planning director shall examine the same to determine whether the plat conforms with the preliminary plat, with all changes permitted, and with all requirements imposed as a condition of its acceptance. If the planning director determines that the final plat conforms to the preliminary plat and all permitted changes or conditions, the planning director shall approve the plat for execution by the mayor. If the planning director determines that the final plat does not conform fully to the preliminary plat as approved, the planning director shall advise the subdivider of the changes or additions that must be made for approval. (Ord. 7-14, 2014)

20.20.080: APPROVAL BY THE CITY ATTORNEY:
After the planning director's approval of the final plat, the city attorney shall review the final plat to determine the plat's conformity to law and the validity of any dedications granted to the city. (Ord. 7-14, 2014)

20.20.090: APPROVAL BY THE MAYOR:
After the city attorney's approval of the final plat, the mayor shall consider the plat, the plans of subdivision, and the offers of dedication. The mayor may reject any or all offers of dedication. As a condition precedent to the acceptance of any streets or easements or the approval of the subdivision, the mayor may require the subdivider, at the city's option, to either improve or agree to improve the streets and install such drainage and utility structures and services within the period the mayor shall specify. Such agreement shall include and have incorporated as part thereof, the plans, specifications and profiles referred to and required under section 20.20.020 of this chapter, or its successor. If the mayor determines that the plat is in conformity with the requirements of the

ordinances of the city and that the mayor is satisfied with the plans of the subdivision and the city's acceptance of all offers of dedication, the mayor shall approve the plat. (Ord. 7-14, 2014)

20.20.100: DISAPPROVAL OF PLAT BY MAYOR; REFILING:
If the mayor determines either that the plat is not in conformity with the requirements of the ordinances of the city, or that he/she is not satisfied with the plans of the subdivision, or if he/she rejects any offer or offers of dedication, the mayor shall disapprove the plat, specifying reasons for such disapproval. Within thirty (30) days after the mayor has disapproved any plat, the subdivider may file with the city engineer a plat altered to meet the mayor's requirements. No final plat shall have any force or effect until the same has been approved by the mayor. (Ord. 7-14, 2014)

20.20.110: RECORDATION WITH COUNTY:
When the mayor has approved the final plat, as aforesaid, and the subdivider has filed with the city recorder the agreement and security device described in sections 20.20.040 and 20.20.050 of this chapter, or successor sections, and when such agreement and security device have been approved by the city attorney as to form, the plat shall be presented by the subdivider to the Salt Lake County recorder for recordation within one hundred eighty (180) days of the mayor's approval, otherwise all approvals both final and preliminary shall be void. (Ord. 7-14, 2014)

EXHIBIT K

UTAH OPEN AND PUBLIC MEETINGS ACT

[Attached]

Chapter 4
Open and Public Meetings Act

Part 1
General Provisions

52-4-101 Title.

This chapter is known as the "Open and Public Meetings Act."

Enacted by Chapter 14, 2006 General Session

52-4-102 Declaration of public policy.

(1) The Legislature finds and declares that the state, its agencies and political subdivisions, exist to aid in the conduct of the people's business.
(2) It is the intent of the Legislature that the state, its agencies, and its political subdivisions:
(a) take their actions openly; and
(b) conduct their deliberations openly.

Renumbered and Amended by Chapter 14, 2006 General Session

52-4-103 Definitions.

As used in this chapter:

(1) "Anchor location" means the physical location from which:
(a) an electronic meeting originates; or
(b) the participants are connected.
(2) "Capitol hill complex" means the grounds and buildings within the area bounded by 300 North Street, Columbus Street, 500 North Street, and East Capitol Boulevard in Salt Lake City.
(3)
(a) "Convening" means the calling together of a public body by a person authorized to do so for the express purpose of discussing or acting upon a subject over which that public body has jurisdiction or advisory power.
(b) "Convening" does not include the initiation of a routine conversation between members of a board of trustees of a large public transit district if the members involved in the conversation do not, during the conversation, take a tentative or final vote on the matter that is the subject of the conversation.
(4) "Electronic meeting" means a public meeting convened or conducted by means of a conference using electronic communications.
(5) "Electronic message" means a communication transmitted electronically, including:
(a) electronic mail;
(b) instant messaging;
(c) electronic chat;
(d) text messaging, as that term is defined in Section 76-4-401; or
(e) any other method that conveys a message or facilitates communication electronically.
(6)
(a) "Meeting" means the convening of a public body or a specified body, with a quorum present, including a workshop or an executive session, whether in person or by means of electronic communications, for the purpose of discussing, receiving comments from the public about, or

acting upon a matter over which the public body or specific body has jurisdiction or advisory power.

(b) "Meeting" does not mean:

(i) a chance gathering or social gathering;

(ii) a convening of the State Tax Commission to consider a confidential tax matter in accordance with Section 59-1-405; or

(iii) a convening of a three-member board of trustees of a large public transit district as defined in Section 17B-2a-802 if:

(A) the board members do not, during the conversation, take a tentative or final vote on the matter that is the subject of the conversation; or

(B) the conversation pertains only to day-to-day management and operation of the public transit district.

(c) "Meeting" does not mean the convening of a public body that has both legislative and executive responsibilities if:

(i) no public funds are appropriated for expenditure during the time the public body is convened; and

(ii) the public body is convened solely for the discussion or implementation of administrative or operational matters:

(A) for which no formal action by the public body is required; or

(B) that would not come before the public body for discussion or action.

(7) "Monitor" means to hear or observe, live, by audio or video equipment, all of the public statements of each member of the public body who is participating in a meeting.

(8) "Participate" means the ability to communicate with all of the members of a public body, either verbally or electronically, so that each member of the public body can hear or observe the communication.

(9)

(a) "Public body" means:

(i) any administrative, advisory, executive, or legislative body of the state or its political subdivisions that:

(A) is created by the Utah Constitution, statute, rule, ordinance, or resolution;

(B) consists of two or more persons;

(C) expends, disburses, or is supported in whole or in part by tax revenue; and

(D) is vested with the authority to make decisions regarding the public's business; or

(ii) any administrative, advisory, executive, or policymaking body of an association, as that term is defined in Section 53G-7-1101, that:

(A) consists of two or more persons;

(B) expends, disburses, or is supported in whole or in part by dues paid by a public school or whose employees participate in a benefit or program described in Title 49, Utah State Retirement and Insurance Benefit Act; and

(C) is vested with authority to make decisions regarding the participation of a public school or student in an interscholastic activity, as that term is defined in Section 53G-7-1101.

(b) "Public body" includes:

(i) an interlocal entity or joint or cooperative undertaking, as those terms are defined in Section 11-13-103;

(ii) a governmental nonprofit co ion as that term is defined in Section 11-13a-102;

(iii) the Utah Independent Redistricting Commission; and

(iv) a project entity, as that term is defined in Section 11-13-103.

(c) "Public body" does not include:

(i) a political party, a political group, or a political caucus;
(ii) a conference committee, a rules committee, or a sifting committee of the Legislature;
(iii) a school community council or charter trust land council, as that term is defined in Section 53G-7-1203;
(iv) a taxed interlocal entity, as that term is defined in Section 11-13-602, if the taxed interlocal entity is not a project entity; or
(v) the following Legislative Management subcommittees, which are established in Section 36-12-8, when meeting for the purpose of selecting or evaluating a candidate to recommend for employment, except that the meeting in which a subcommittee votes to recommend that a candidate be employed shall be subject to the provisions of this act:
(A) the Research and General Counsel Subcommittee;
(B) the Budget Subcommittee; and
(C) the Audit Subcommittee.

(10) "Public statement" means a statement made in the ordinary course of business of the public body with the intent that all other members of the public body receive it.

(11)
(a) "Quorum" means a simple majority of the membership of a public body, unless otherwise defined by applicable law.
(b) "Quorum" does not include a meeting of two elected officials by themselves when no action, either formal or informal, is taken.

(12) "Recording" means an audio, or an audio and video, record of the proceedings of a meeting that can be used to review the proceedings of the meeting.

(13) "Specified body":
(a) means an administrative, advisory, executive, or legislative body that:
(i) is not a public body;
(ii) consists of three or more members; and
(iii) includes at least one member who is:
(A) a legislator; and
(B) officially appointed to the body by the president of the Senate, speaker of the House of Representatives, or governor; and
(b) does not include a body listed in Subsection (9)(c)(ii) or (9)(c)(v).

(14) "Transmit" means to send, convey, or communicate an electronic message by electronic means.

Amended by Chapter 422, 2022 General Session

52-4-104 Training.

(1) The presiding officer of the public body shall ensure that the members of the public body are provided with annual training on the requirements of this chapter.
(2) The presiding officer shall ensure that any training described in Subsection (1) complies with Title 63G, Chapter 22, State Training and Certification Requirements.

Amended by Chapter 200, 2018 General Session

Part 2

Meetings

52-4-201 Meetings open to the public -- Exceptions.

(1) A meeting is open to the public unless closed under Sections 52-4-204, 52-4-205, and 52-4-206.

(2)

(a) A meeting that is open to the public includes a workshop or an executive session of a public body in which a quorum is present, unless closed in accordance with this chapter.

(b) A workshop or an executive session of a public body in which a quorum is present that is held on the same day as a regularly scheduled public meeting of the public body may only be held at the location where the public body is holding the regularly scheduled public meeting unless:

(i) the workshop or executive session is held at the location where the public body holds its regularly scheduled public meetings but, for that day, the regularly scheduled public meeting is being held at different location;

(ii) any of the meetings held on the same day is a site visit or a traveling tour and, in accordance with this chapter, public notice is given;

(iii) the workshop or executive session is an electronic meeting conducted according to the requirements of Section 52-4-207; or

(iv) it is not practicable to conduct the workshop or executive session at the regular location of the public body's open meetings due to an emergency or extraordinary circumstances.

Renumbered and Amended by Chapter 14, 2006 General Session
Amended by Chapter 263, 2006 General Session

52-4-202 Public notice of meetings -- Emergency meetings.

(1)

(a)

(i) A public body shall give not less than 24 hours' public notice of each meeting.

(ii) A specified body shall give not less than 24 hours' public notice of each meeting that the specified body holds on the capitol hill complex.

(2)

(b) The public notice required under Subsection (1)(a) shall include the meeting:

(i) agenda;

(ii) date;

(iii) time; and

(iv) place.

(a) In addition to the requirements under Subsection (1), a public body which holds regular meetings that are scheduled in advance over the course of a year shall give public notice at least once each year of its annual meeting schedule as provided in this section.

(b) The public notice under Subsection (2)(a) shall specify the date, time, and place of the scheduled meetings.

(3)

(a) A public body or specified body satisfies a requirement for public notice by:

(i) posting written notice:

(A) except for an electronic meeting held without an anchor location under Subsection 52-4-207(4), at the principal office of the public body or specified body, or if no principal office exists, at the building where the meeting is to be held; and

(B) on the Utah Public Notice Website created under Section 63A-16-601; and

(ii) providing notice to:

(A) at least one newspaper of general circulation within the geographic jurisdiction of the public body; or

(B) a local media correspondent.

(b) A public body or specified body is in compliance with the provisions of Subsection (3)(a)(ii) by providing notice to a newspaper or local media correspondent under the provisions of Subsection 63A-16-601(4)(d).

(c) A public body whose limited resources make compliance with Subsection (3)(a)(i)(B) difficult may request the Division of Archives and Records Service, created in Section 63A-12-101, to provide technical assistance to help the public body in its effort to comply.

(4) A public body and a specified body are encouraged to develop and use additional electronic means to provide notice of their meetings under Subsection (3).

(5)

(a) The notice requirement of Subsection (1) may be disregarded if:

(i) because of unforeseen circumstances it is necessary for a public body or specified body to hold an emergency meeting to consider matters of an emergency or urgent nature; and

(ii) the public body or specified body gives the best notice practicable of:

(A) the time and place of the emergency meeting; and

(B) the topics to be considered at the emergency meeting.

(b) An emergency meeting of a public body may not be held unless:

(i) an attempt has been made to notify all the members of the public body; and

(ii) a majority of the members of the public body approve the meeting.

(6)

(a) A public notice that is required to include an agenda under Subsection (1) shall provide reasonable specificity to notify the public as to the topics to be considered at the meeting. Each topic shall be listed under an agenda item on the meeting agenda.

(b) Subject to the provisions of Subsection (6)(c), and at the discretion of the presiding member of the public body, a topic raised by the public may be discussed during an open meeting, even if the topic raised by the public was not included in the agenda or advance public notice for the meeting.

(c) Except as provided in Subsection (5), relating to emergency meetings, a public body may not take final action on a topic in an open meeting unless the topic is:

(i) listed under an agenda item as required by Subsection (6)(a); and

(ii) included with the advance public notice required by this section.

(7) Except as provided in this section, this chapter does not apply to a specified body.

Amended by Chapter 84, 2021 General Session
Amended by Chapter 345, 2021 General Session

52-4-203 Written minutes of open meetings -- Public records -- Recording of meetings.

(1) Except as provided under Subsection (7), written minutes and a recording shall be kept of all open meetings.

(2)

(a) Written minutes of an open me shall include:

(i) the date, time, and place of the meeting;

(ii) the names of members present and absent;

(iii) the substance of all matters proposed, discussed, or decided by the public body which may include a summary of comments made by members of the public body;

(iv) a record, by individual member, of each vote taken by the public body;

(v) the name of each person who:
(A) is not a member of the public body; and
(B) after being recognized by the presiding member of the public body, provided testimony or comments to the public body;
(vi) the substance, in brief, of the testimony or comments provided by the public under Subsection (2)(a)(v); and
(vii) any other information that is a record of the proceedings of the meeting that any member requests be entered in the minutes or recording.
(b) A public body may satisfy the requirement under Subsection (2)(a)(iii) or (vi) that minutes include the substance of matters proposed, discussed, or decided or the substance of testimony or comments by maintaining a publicly available online version of the minutes that provides a link to the meeting recording at the place in the recording where the matter is proposed, discussed, or decided or the testimony or comments provided.
(c) A public body that has members who were elected to the public body shall satisfy the requirement described in Subsection (2)(a)(iv) by recording each vote:
(i) in list format;
(ii) by category for each action taken by a member, including yes votes, no votes, and absent members; and
(iii) by each member's name.
(3) A recording of an open meeting shall:
(a) be a complete and unedited record of all open portions of the meeting from the commencement of the meeting through adjournment of the meeting; and
(b) be properly labeled or identified with the date, time, and place of the meeting.
(4)
(a) As used in this Subsection (4):
(i) "Approved minutes" means written minutes:
(A) of an open meeting; and
(B) that have been approved by the public body that held the open meeting.
(ii) "Electronic information" means information presented or provided in an electronic format.
(iii) "Pending minutes" means written minutes:
(A) of an open meeting; and
(B) that have been prepared in draft form and are subject to change before being approved by the public body that held the open meeting.
(iv) "Specified local public body" means a legislative body of a county, city, town, or metro township.
(v) "State public body" means a public body that is an administrative, advisory, executive, or legislative body of the state.
(vi) "State website" means the Utah Public Notice Website created under Section 63A-16-601.
(b) Pending minutes, approved minutes, and a recording of a public meeting are public records under Title 63G, Chapter 2, Government Records Access and Management Act.
(c) Pending minutes shall contain a clear indication that the public body has not yet approved the minutes or that the minutes are subject to change until the public body approves them.
(d) A public body shall require an individual who, at an open meeting of the public body, publicly presents or provides electronic information, relating to an item on the public body's meeting agenda, to provide the public body, at the time of the meeting, an electronic or hard copy of the electronic information for inclusion in the public record.
(e) A state public body shall:

(i) make pending minutes available to the public within 30 days after holding the open meeting that is the subject of the pending minutes;
(ii) within three business days after approving written minutes of an open meeting:
(A) post to the state website a copy of the approved minutes and any public materials distributed at the meeting;
(B) make the approved minutes and public materials available to the public at the public body's primary office; and
(C) if the public body provides online minutes under Subsection (2)(b), post approved minutes that comply with Subsection (2)(b) and the public materials on the public body's website; and
(iii) within three business days after holding an open meeting, post on the state website an audio recording of the open meeting, or a link to the recording.

(f) A specified local public body shall:
(i) make pending minutes available to the public within 30 days after holding the open meeting that is the subject of the pending minutes;
(ii) within three business days after approving written minutes of an open meeting, post and make available a copy of the approved minutes and any public materials distributed at the meeting, as provided in Subsection (4)(e)(ii); and
(iii) within three business days after holding an open meeting, make an audio recording of the open meeting available to the public for listening.

(g) A public body that is not a state public body or a specified local public body shall:
(i) make pending minutes available to the public within a reasonable time after holding the open meeting that is the subject of the pending minutes;
(ii) within three business days after approving written minutes of an open meeting:
(A) post and make available a copy of the approved minutes and any public materials distributed at the meeting, as provided in Subsection (4)(e)(ii); or
(B) comply with Subsections (4)(e)(ii)(B) and (C) and post to the state website a link to a website on which the approved minutes and any public materials distributed at the meeting are posted; and
(iii) within three business days after holding an open meeting, make an audio recording of the open meeting available to the public for listening.

(h) A public body shall establish and implement procedures for the public body's approval of the written minutes of each meeting.

(i) Approved minutes of an open meeting are the official record of the meeting.

(5) All or any part of an open meeting may be independently recorded by any person in attendance if the recording does not interfere with the conduct of the meeting.

(6) The written minutes or recording of an open meeting that are required to be retained permanently shall be maintained in or converted to a format that meets long-term records storage requirements.

(7) Notwithstanding Subsection (1), a recording is not required to be kept of:
(a) an open meeting that is a site visit or a traveling tour, if no vote or action is taken by the public body; or
(b) an open meeting of a local dis[illegible]nder Title 17B, Limited Purpose Local Government Entities - Local Districts, or special service district under Title 17D, Chapter 1, Special Service District Act, if the district's annual budgeted expenditures for all funds, excluding capital expenditures and debt service, are $50,000 or less.

Amended by Chapter 402, 2022 General Session

52-4-204 Closed meeting held upon vote of members -- Business -- Reasons for meeting recorded.

(1) A closed meeting may be held if:

(a)

(i) a quorum is present;

(ii) the meeting is an open meeting for which notice has been given under Section 52-4-202; and

(iii)

(A) two-thirds of the members of the public body present at the open meeting vote to approve closing the meeting;

(B) for a meeting that is required to be closed under Section 52-4-205, if a majority of the members of the public body present at an open meeting vote to approve closing the meeting;

(C) for an ethics committee of the Legislature that is conducting an open meeting for the purpose of reviewing an ethics complaint, a majority of the members present vote to approve closing the meeting for the purpose of seeking or obtaining legal advice on legal, evidentiary, or procedural matters, or for conducting deliberations to reach a decision on the complaint;

(D) for the Political Subdivisions Ethics Review Commission established in Section 63A-15-201 that is conducting an open meeting for the purpose of reviewing an ethics complaint in accordance with Section 63A-15-701, a majority of the members present vote to approve closing the meeting for the purpose of seeking or obtaining legal advice on legal, evidentiary, or procedural matters, or for conducting deliberations to reach a decision on the complaint;

(E) for a project entity that is conducting an open meeting for the purposes of determining the value of an asset, developing a strategy related to the sale or use of that asset;

(F) for a project entity that is conducting an open meeting for purposes of discussing a business decision, the disclosure of which could cause commercial injury to, or confer a competitive advantage upon a potential or actual competitor of, the project entity; or

(G) for a project entity that is conducting an open meeting for purposes of discussing a record, the disclosure of which could cause commercial injury to, or confer a competitive advantage upon a potential competitor of, the project entity; or

(b)

(i) for the Independent Legislative Ethics Commission, the closed meeting is convened for the purpose of conducting business relating to the receipt or review of an ethics complaint, if public notice of the closed meeting is given under Section 52-4-202, with the agenda for the meeting stating that the meeting will be closed for the purpose of "conducting business relating to the receipt or review of ethics complaints";

(ii) for the Political Subdivisions Ethics Review Commission established in Section 63A-15-201, the closed meeting is convened for the purpose of conducting business relating to the preliminary review of an ethics complaint in accordance with Section 63A-15-602, if public notice of the closed meeting is given under Section 52-4-202, with the agenda for the meeting stating that the meeting will be closed for the purpose of "conducting business relating to the review of ethics complaints";

(iii) for the Independent Executive Branch Ethics Commission created in Section 63A-14-202, the closed meeting is convened for the purpose of conducting business relating to an ethics complaint, if public notice of the closed meeting is given under Section 52-4-202, with the

agenda for the meeting stating that the meeting will be closed for the purpose of "conducting business relating to an ethics complaint"; or

(iv) for the Data Security Management Council created in Section 63A-16-701, the closed meeting is convened in accordance with Subsection 63A-16-701(7), if public notice of the closed meeting is given under Section 52-4-202, with the agenda for the meeting stating that the meeting will be closed for the purpose of "conducting business relating to information technology security."

(2) A closed meeting is not allowed unless each matter discussed in the closed meeting is permitted under Section 52-4-205.

(3)

(a) An ordinance, resolution, rule, regulation, contract, or appointment may not be approved at a closed meeting.

(b)

(i) A public body may not take a vote in a closed meeting, except for a vote on a motion to end the closed portion of the meeting and return to an open meeting.

(ii) A motion to end the closed portion of a meeting may be approved by a majority of the public body members present at the meeting.

(4) The following information shall be publicly announced and entered on the minutes of the open meeting at which the closed meeting was approved:

(a) the reason or reasons for holding the closed meeting;

(b) the location where the closed meeting will be held; and

(c) the vote by name, of each member of the public body, either for or against the motion to hold the closed meeting.

(5) Except as provided in Subsection 52-4-205(2), nothing in this chapter shall be construed to require any meeting to be closed to the public.

Amended by Chapter 169, 2022 General Session
Amended by Chapter 422, 2022 General Session

Superseded 7/1/2022

52-4-205 Purposes of closed meetings -- Certain issues prohibited in closed meetings.

(1) A closed meeting described under Section 52-4-204 may only be held for:

(a) except as provided in Subsection (3), discussion of the character, professional competence, or physical or mental health of an individual;

(b) strategy sessions to discuss collective bargaining;

(c) strategy sessions to discuss pending or reasonably imminent litigation;

(d) strategy sessions to discuss the purchase, exchange, or lease of real property, including any form of a water right or water shares, or to discuss a proposed development agreement, project proposal, or financing proposal related to the development of land owned by the state, if public discussion would:

(i) disclose the appraisal or estimated value of the property under consideration; or

(ii) prevent the public body from completing the transaction on the best possible terms;

(e) strategy sessions to discuss the sale of real property, including any form of a water right or water shares, if:

(i) public discussion of the transaction would:

(A) disclose the appraisal or estimated value of the property under consideration; or

(B) prevent the public body from completing the transaction on the best possible terms;

(ii) the public body previously gave public notice that the property would be offered for sale; and

(iii) the terms of the sale are publicly disclosed before the public body approves the sale;

(f) discussion regarding deployment of security personnel, devices, or systems;

(g) investigative proceedings regarding allegations of criminal misconduct;

(h) as relates to the Independent Legislative Ethics Commission, conducting business relating to the receipt or review of ethics complaints;

(i) as relates to an ethics committee of the Legislature, a purpose permitted under Subsection 52-4-204(1)(a)(iii)(C);

(j) as relates to the Independent Executive Branch Ethics Commission created in Section 63A-14-202, conducting business relating to an ethics complaint;

(k) as relates to a county legislative body, discussing commercial information as defined in Section 59-1-404;

(l) as relates to the Utah Higher Education Assistance Authority and its appointed board of directors, discussing fiduciary or commercial information as defined in Section 53B-12-102;

(m) deliberations, not including any information gathering activities, of a public body acting in the capacity of:

(i) an evaluation committee under Title 63G, Chapter 6a, Utah Procurement Code, during the process of evaluating responses to a solicitation, as defined in Section 63G-6a-103;

(ii) a protest officer, defined in Section 63G-6a-103, during the process of making a decision on a protest under Title 63G, Chapter 6a, Part 16, Protests; or

(iii) a procurement appeals panel under Title 63G, Chapter 6a, Utah Procurement Code, during the process of deciding an appeal under Title 63G, Chapter 6a, Part 17, Procurement Appeals Board;

(n) the purpose of considering information that is designated as a trade secret, as defined in Section 13-24-2, if the public body's consideration of the information is necessary to properly conduct a procurement under Title 63G, Chapter 6a, Utah Procurement Code;

(o) the purpose of discussing information provided to the public body during the procurement process under Title 63G, Chapter 6a, Utah Procurement Code, if, at the time of the meeting:

(i) the information may not, under Title 63G, Chapter 6a, Utah Procurement Code, be disclosed to a member of the public or to a participant in the procurement process; and

(ii) the public body needs to review or discuss the information to properly fulfill its role and responsibilities in the procurement process;

(p) as relates to the governing board of a governmental nonprofit corporation, as that term is defined in Section 11-13a-102, the purpose of discussing information that is designated as a trade secret, as that term is defined in Section 13-24-2, if:

(i) public knowledge of the discussion would reasonably be expected to result in injury to the owner of the trade secret; and

(ii) discussion of the information is necessary for the governing board to properly discharge the board's duties and conduct the board's business;

(q) as it relates to the Cannabis Production Establishment Licensing Advisory Board, to review confidential information regarding violations and security requirements in relation to the operation of cannabis production establishments; or

(r) a purpose for which a meeting is required to be closed under Subsection (2).

(2) The following meetings shall be closed:

(a) a meeting of the Health an an Services Interim Committee to review a report described in Subsection 62A-16-301(1)(a), and the responses to the report described in Subsections 62A-16-301(2) and (4);

(b) a meeting of the Child Welfare Legislative Oversight Panel to:

(i) review a report described in Subsection 62A-16-301(1)(a), and the responses to the report described in Subsections 62A-16-301(2) and (4); or
(ii) review and discuss an individual case, as described in Subsection 62A-4a-207(5);
(c) a meeting of the Opioid and Overdose Fatality Review Committee, created in Section 26-7-13, to review and discuss an individual case, as described in Subsection 26-7-13(10);
(d) a meeting of a conservation district as defined in Section 17D-3-102 for the purpose of advising the Natural Resource Conservation Service of the United States Department of Agriculture on a farm improvement project if the discussed information is protected information under federal law;
(e) a meeting of the Compassionate Use Board established in Section 26-61a-105 for the purpose of reviewing petitions for a medical cannabis card in accordance with Section 26-61a-105;
(f) a meeting of the Colorado River Authority of Utah if:
(i) the purpose of the meeting is to discuss an interstate claim to the use of the water in the Colorado River system; and
(ii) failing to close the meeting would:
(A) reveal the contents of a record classified as protected under Subsection 63G-2-305(82);
(B) reveal a legal strategy relating to the state's claim to the use of the water in the Colorado River system;
(C) harm the ability of the Colorado River Authority of Utah or river commissioner to negotiate the best terms and conditions regarding the use of water in the Colorado River system; or
(D) give an advantage to another state or to the federal government in negotiations regarding the use of water in the Colorado River system;
(g) a meeting of the General Regulatory Sandbox Program Advisory Committee if:
(i) the purpose of the meeting is to discuss an application for participation in the regulatory sandbox as defined in Section 63N-16-102; and
(ii) failing to close the meeting would reveal the contents of a record classified as protected under Subsection 63G-2-305(83); and
(h) a meeting of a project entity if:
(i) the purpose of the meeting is to conduct a strategy session to discuss market conditions relevant to a business decision regarding the value of a project entity asset if the terms of the business decision are publicly disclosed before the decision is finalized and a public discussion would:
(A) disclose the appraisal or estimated value of the project entity asset under consideration; or
(B) prevent the project entity from completing on the best possible terms a contemplated transaction concerning the project entity asset;
(ii) the purpose of the meeting is to discuss a record, the disclosure of which could cause commercial injury to, or confer a competitive advantage upon a potential or actual competitor of, the project entity;
(iii) the purpose of the meeting is to discuss a business decision, the disclosure of which could cause commercial injury to, or confer a competitive advantage upon a potential or actual competitor of, the project entity, or
(iv) failing to close the meeting would prevent the project entity from getting the best price on the market.
(3) In a closed meeting, a public body may not:
(a) interview a person applying to fill an elected position;

(b) discuss filling a midterm vacancy or temporary absence governed by Title 20A, Chapter 1, Part 5, Candidate Vacancy and Vacancy and Temporary Absence in Elected Office; or
(c) discuss the character, professional competence, or physical or mental health of the person whose name was submitted for consideration to fill a midterm vacancy or temporary absence governed by Title 20A, Chapter 1, Part 5, Candidate Vacancy and Vacancy and Temporary Absence in Elected Office.

Amended by Chapter 237, 2022 General Session
Amended by Chapter 290, 2022 General Session
Amended by Chapter 332, 2022 General Session
Amended by Chapter 422, 2022 General Session

Effective 7/1/2022
Superseded 9/1/2022
52-4-205 Purposes of closed meetings -- Certain issues prohibited in closed meetings.

(1) A closed meeting described under Section 52-4-204 may only be held for:
(a) except as provided in Subsection (3), discussion of the character, professional competence, or physical or mental health of an individual;
(b) strategy sessions to discuss collective bargaining;
(c) strategy sessions to discuss pending or reasonably imminent litigation;
(d) strategy sessions to discuss the purchase, exchange, or lease of real property, including any form of a water right or water shares, or to discuss a proposed development agreement, project proposal, or financing proposal related to the development of land owned by the state, if public discussion would:
(i) disclose the appraisal or estimated value of the property under consideration; or
(ii) prevent the public body from completing the transaction on the best possible terms;
(e) strategy sessions to discuss the sale of real property, including any form of a water right or water shares, if:
(i) public discussion of the transaction would:
(A) disclose the appraisal or estimated value of the property under consideration; or
(B) prevent the public body from completing the transaction on the best possible terms;
(ii) the public body previously gave public notice that the property would be offered for sale; and
(iii) the terms of the sale are publicly disclosed before the public body approves the sale;
(f) discussion regarding deployment of security personnel, devices, or systems;
(g) investigative proceedings regarding allegations of criminal misconduct;
(h) as relates to the Independent Legislative Ethics Commission, conducting business relating to the receipt or review of ethics complaints;
(i) as relates to an ethics committee of the Legislature, a purpose permitted under Subsection 52-4-204(1)(a)(iii)(C);
(j) as relates to the Independent Executive Branch Ethics Commission created in Section 63A-14-202, conducting business relating to an ethics complaint;
(k) as relates to a county legislative body, discussing commercial information as defined in Section 59-1-404;
(l) as relates to the Utah Higher Education Assistance Authority and its appointed board of directors, discussing fiduciary or commercial information as defined in Section 53B-12-102;
(m) deliberations, not including any information gathering activities, of a public body acting in the capacity of:

(i) an evaluation committee under Title 63G, Chapter 6a, Utah Procurement Code, during the process of evaluating responses to a solicitation, as defined in Section 63G-6a-103;
(ii) a protest officer, defined in Section 63G-6a-103, during the process of making a decision on a protest under Title 63G, Chapter 6a, Part 16, Protests; or
(iii) a procurement appeals panel under Title 63G, Chapter 6a, Utah Procurement Code, during the process of deciding an appeal under Title 63G, Chapter 6a, Part 17, Procurement Appeals Board;

(n) the purpose of considering information that is designated as a trade secret, as defined in Section 13-24-2, if the public body's consideration of the information is necessary to properly conduct a procurement under Title 63G, Chapter 6a, Utah Procurement Code;

(o) the purpose of discussing information provided to the public body during the procurement process under Title 63G, Chapter 6a, Utah Procurement Code, if, at the time of the meeting:
(i) the information may not, under Title 63G, Chapter 6a, Utah Procurement Code, be disclosed to a member of the public or to a participant in the procurement process; and
(ii) the public body needs to review or discuss the information to properly fulfill its role and responsibilities in the procurement process;

(p) as relates to the governing board of a governmental nonprofit corporation, as that term is defined in Section 11-13a-102, the purpose of discussing information that is designated as a trade secret, as that term is defined in Section 13-24-2, if:
(i) public knowledge of the discussion would reasonably be expected to result in injury to the owner of the trade secret; and
(ii) discussion of the information is necessary for the governing board to properly discharge the board's duties and conduct the board's business;

(q) as it relates to the Cannabis Production Establishment Licensing Advisory Board, to review confidential information regarding violations and security requirements in relation to the operation of cannabis production establishments; or

(r) a purpose for which a meeting is required to be closed under Subsection (2).

(2) The following meetings shall be closed:

(a) a meeting of the Health and Human Services Interim Committee to review a report described in Subsection 62A-16-301(1)(a), and the responses to the report described in Subsections 62A-16-301(2) and (4);

(b) a meeting of the Child Welfare Legislative Oversight Panel to:
(i) review a report described in Subsection 62A-16-301(1)(a), and the responses to the report described in Subsections 62A-16-301(2) and (4); or
(ii) review and discuss an individual case, as described in Subsection 62A-4a-207(5);

(c) a meeting of the Opioid and Overdose Fatality Review Committee, created in Section 26-7-13, to review and discuss an individual case, as described in Subsection 26-7-13(10);

(d) a meeting of a conservation district as defined in Section 17D-3-102 for the purpose of advising the Natural Resource Conservation Service of the United States Department of Agriculture on a farm improvement project if the discussed information is protected information under federal law;

(e) a meeting of the Compassionate Use Board established in Section 26-61a-105 for the purpose of reviewing petitions for a medical cannabis card in accordance with Section 26-61a-105;

(f) a meeting of the Colorado l uthority of Utah if:
(i) the purpose of the meeting is to discuss an interstate claim to the use of the water in the Colorado River system; and
(ii) failing to close the meeting would:

(A) reveal the contents of a record classified as protected under Subsection 63G-2-305(82);
(B) reveal a legal strategy relating to the state's claim to the use of the water in the Colorado River system;
(C) harm the ability of the Colorado River Authority of Utah or river commissioner to negotiate the best terms and conditions regarding the use of water in the Colorado River system; or
(D) give an advantage to another state or to the federal government in negotiations regarding the use of water in the Colorado River system;

(g) a meeting of the General Regulatory Sandbox Program Advisory Committee if:
(i) the purpose of the meeting is to discuss an application for participation in the regulatory sandbox as defined in Section 63N-16-102; and
(ii) failing to close the meeting would reveal the contents of a record classified as protected under Subsection 63G-2-305(83);
(h) a meeting of a project entity if:
(i) the purpose of the meeting is to conduct a strategy session to discuss market conditions relevant to a business decision regarding the value of a project entity asset if the terms of the business decision are publicly disclosed before the decision is finalized and a public discussion would:
(A) disclose the appraisal or estimated value of the project entity asset under consideration; or
(B) prevent the project entity from completing on the best possible terms a contemplated transaction concerning the project entity asset;
(ii) the purpose of the meeting is to discuss a record, the disclosure of which could cause commercial injury to, or confer a competitive advantage upon a potential or actual competitor of, the project entity;
(iii) the purpose of the meeting is to discuss a business decision, the disclosure of which could cause commercial injury to, or confer a competitive advantage upon a potential or actual competitor of, the project entity; or
(iv) failing to close the meeting would prevent the project entity from getting the best price on the market; and
(i) a meeting of the School Activity Eligibility Commission, described in Section 53G-6-1003, if the commission is in effect in accordance with Section 53G-6-1002, to consider, discuss, or determine, in accordance with Section 53G-6-1004, an individual student's eligibility to participate in an interscholastic activity, as that term is defined in Section 53G-6-1001, including the commission's determinative vote on the student's eligibility.

(3) In a closed meeting, a public body may not:
(a) interview a person applying to fill an elected position;
(b) discuss filling a midterm vacancy or temporary absence governed by Title 20A, Chapter 1, Part 5, Candidate Vacancy and Vacancy and Temporary Absence in Elected Office; or
(c) discuss the character, professional competence, or physical or mental health of the person whose name was submitted for consideration to fill a midterm vacancy or temporary absence governed by Title 20A, Chapter 1, Part 5, Candidate Vacancy and Vacancy and Temporary Absence in Elected Office.

Effective 9/1/2022
52-4-205 Purposes of closed meetings -- Certain issues prohibited in closed meetings.
(1) A closed meeting described under Section 52-4-204 may only be held for:

(a) except as provided in Subsection (3), discussion of the character, professional competence, or physical or mental health of an individual;
(b) strategy sessions to discuss collective bargaining;
(c) strategy sessions to discuss pending or reasonably imminent litigation;
(d) strategy sessions to discuss the purchase, exchange, or lease of real property, including any form of a water right or water shares, or to discuss a proposed development agreement, project proposal, or financing proposal related to the development of land owned by the state, if public discussion would:
(i) disclose the appraisal or estimated value of the property under consideration; or
(ii) prevent the public body from completing the transaction on the best possible terms;
(e) strategy sessions to discuss the sale of real property, including any form of a water right or water shares, if:
(i) public discussion of the transaction would:
(A) disclose the appraisal or estimated value of the property under consideration; or
(B) prevent the public body from completing the transaction on the best possible terms;
(ii) the public body previously gave public notice that the property would be offered for sale; and
(iii) the terms of the sale are publicly disclosed before the public body approves the sale;
(f) discussion regarding deployment of security personnel, devices, or systems;
(g) investigative proceedings regarding allegations of criminal misconduct;
(h) as relates to the Independent Legislative Ethics Commission, conducting business relating to the receipt or review of ethics complaints;
(i) as relates to an ethics committee of the Legislature, a purpose permitted under Subsection 52-4-204(1)(a)(iii)(C);
(j) as relates to the Independent Executive Branch Ethics Commission created in Section 63A-14-202, conducting business relating to an ethics complaint;
(k) as relates to a county legislative body, discussing commercial information as defined in Section 59-1-404;
(l) as relates to the Utah Higher Education Assistance Authority and its appointed board of directors, discussing fiduciary or commercial information as defined in Section 53B-12-102;
(m) deliberations, not including any information gathering activities, of a public body acting in the capacity of:
(i) an evaluation committee under Title 63G, Chapter 6a, Utah Procurement Code, during the process of evaluating responses to a solicitation, as defined in Section 63G-6a-103;
(ii) a protest officer, defined in Section 63G-6a-103, during the process of making a decision on a protest under Title 63G, Chapter 6a, Part 16, Protests; or
(iii) a procurement appeals panel under Title 63G, Chapter 6a, Utah Procurement Code, during the process of deciding an appeal under Title 63G, Chapter 6a, Part 17, Procurement Appeals Board;
(n) the purpose of considering information that is designated as a trade secret, as defined in Section 13-24-2, if the public body's consideration of the information is necessary to properly conduct a procurement under Title 63G, Chapter 6a, Utah Procurement Code;
(o) the purpose of discussing information provided to the public body during the procurement process under Title 63G, Chapter 6a, Utah Procurement Code, if, at the time of the meeting:
(i) the information may not, under Title 63G, Chapter 6a, Utah Procurement Code, be disclosed to a member of the public or to a participant in the procurement process; and
(ii) the public body needs to review or discuss the information to properly fulfill its role and responsibilities in the procurement process;

(p) as relates to the governing board of a governmental nonprofit corporation, as that term is defined in Section 11-13a-102, the purpose of discussing information that is designated as a trade secret, as that term is defined in Section 13-24-2, if:
(i) public knowledge of the discussion would reasonably be expected to result in injury to the owner of the trade secret; and
(ii) discussion of the information is necessary for the governing board to properly discharge the board's duties and conduct the board's business;
(q) as it relates to the Cannabis Production Establishment Licensing Advisory Board, to review confidential information regarding violations and security requirements in relation to the operation of cannabis production establishments; or
(r) a purpose for which a meeting is required to be closed under Subsection (2).

(2) The following meetings shall be closed:
(a) a meeting of the Health and Human Services Interim Committee to review a report described in Subsection 62A-16-301(1)(a), and the responses to the report described in Subsections 62A-16-301(2) and (4);
(b) a meeting of the Child Welfare Legislative Oversight Panel to:
(i) review a report described in Subsection 62A-16-301(1)(a), and the responses to the report described in Subsections 62A-16-301(2) and (4); or
(ii) review and discuss an individual case, as described in Subsection 36-33-103(2);
(c) a meeting of the Opioid and Overdose Fatality Review Committee, created in Section 26-7-13, to review and discuss an individual case, as described in Subsection 26-7-13(10);
(d) a meeting of a conservation district as defined in Section 17D-3-102 for the purpose of advising the Natural Resource Conservation Service of the United States Department of Agriculture on a farm improvement project if the discussed information is protected information under federal law;
(e) a meeting of the Compassionate Use Board established in Section 26-61a-105 for the purpose of reviewing petitions for a medical cannabis card in accordance with Section 26-61a-105;
(f) a meeting of the Colorado River Authority of Utah if:
(i) the purpose of the meeting is to discuss an interstate claim to the use of the water in the Colorado River system; and
(ii) failing to close the meeting would:
(A) reveal the contents of a record classified as protected under Subsection 63G-2-305(82);
(B) reveal a legal strategy relating to the state's claim to the use of the water in the Colorado River system;
(C) harm the ability of the Colorado River Authority of Utah or river commissioner to negotiate the best terms and conditions regarding the use of water in the Colorado River system; or
(D) give an advantage to another state or to the federal government in negotiations regarding the use of water in the Colorado River system;
(g) a meeting of the General Regulatory Sandbox Program Advisory Committee if:
(i) the purpose of the meeting is to discuss an application for participation in the regulatory sandbox as defined in Section 63N-16-102; and
(ii) failing to close the meeting would reveal the contents of a record classified as protected under Subsection 63G-2-305(83);
(h) a meeting of a project entity,
(i) the purpose of the meeting is to conduct a strategy session to discuss market conditions relevant to a business decision regarding the value of a project entity asset if the terms of

the business decision are publicly disclosed before the decision is finalized and a public discussion would:

(A) disclose the appraisal or estimated value of the project entity asset under consideration; or

(B) prevent the project entity from completing on the best possible terms a contemplated transaction concerning the project entity asset;

(i) a meeting of the School Activity Eligibility Commission, described in Section 53G-6-1003, if the commission is in effect in accordance with Section 53G-6-1002, to consider, discuss, or determine, in accordance with Section 53G-6-1004, an individual student's eligibility to participate in an interscholastic activity, as that term is defined in Section 53G-6-1001, including the commission's determinative vote on the student's eligibility.

(ii) the purpose of the meeting is to discuss a record, the disclosure of which could cause commercial injury to, or confer a competitive advantage upon a potential or actual competitor of, the project entity;

(iii) the purpose of the meeting is to discuss a business decision, the disclosure of which could cause commercial injury to, or confer a competitive advantage upon a potential or actual competitor of, the project entity; or

(iv) failing to close the meeting would prevent the project entity from getting the best price on the market; and

(3) In a closed meeting, a public body may not:

(a) interview a person applying to fill an elected position;

(b) discuss filling a midterm vacancy or temporary absence governed by Title 20A, Chapter 1, Part 5, Candidate Vacancy and Vacancy and Temporary Absence in Elected Office; or

(c) discuss the character, professional competence, or physical or mental health of the person whose name was submitted for consideration to fill a midterm vacancy or temporary absence governed by Title 20A, Chapter 1, Part 5, Candidate Vacancy and Vacancy and Temporary Absence in Elected Office.

Amended by Chapter 237, 2022 General Session
Amended by Chapter 290, 2022 General Session
Amended by Chapter 332, 2022 General Session
Amended by Chapter 335, 2022 General Session
Amended by Chapter 422, 2022 General Session
Amended by Chapter 478, 2022 General Session

52-4-206 Record of closed meetings.

(1) Except as provided under Subsection (6), if a public body closes a meeting under Subsection 52-4-205(1), the public body:

(a) shall make a recording of the closed portion of the meeting; and

(b) may keep detailed written minutes that disclose the content of the closed portion of the meeting.

(2) A recording of a closed meeting shall be complete and unedited from the commencement of the closed meeting through adjournment of the closed meeting.

(3) The recording and any minutes of a closed meeting shall include:

(a) the date, time, and place of the meeting;

(b) the names of members present and absent; and

(c) the names of all others present except where the disclosure would infringe on the confidentiality necessary to fulfill the original purpose of closing the meeting.

(4) Minutes or recordings of a closed meeting that are required to be retained permanently shall be maintained in or converted to a format that meets long-term records storage requirements.
(5) A recording, transcript, report, and written minutes of a closed meeting are protected records under Title 63G, Chapter 2, Government Records Access and Management Act, except that the records may be disclosed under a court order only as provided under Section 52-4-304.
(6) If a public body closes a meeting exclusively for the purposes described under Subsection 52-4-205(1)(a), (1)(f), or (2):
(a) the person presiding shall sign a sworn statement affirming that the sole purpose for closing the meeting was to discuss the purposes described under Subsection 52-4-205(1)(a),(1)(f), or (2); and
(b) the provisions of Subsection (1) of this section do not apply.

Amended by Chapter 425, 2018 General Session

52-4-207 Electronic meetings -- Authorization -- Requirements.

(1) Except as otherwise provided for a charter school in Section 52-4-209, a public body may convene and conduct an electronic meeting in accordance with this section.

(2)
(a) A public body may not hold an electronic meeting unless the public body has adopted a resolution, rule, or ordinance governing the use of electronic meetings.
(b) A resolution, rule, or ordinance described in Subsection (2)(a) that governs an electronic meeting held after December 31, 2022, shall establish the conditions under which a remote member is included in calculating a quorum.
(c) A resolution, rule, or ordinance described in Subsection (2)(a) may:
(i) prohibit or limit electronic meetings based on budget, public policy, or logistical considerations;
(ii) require a quorum of the public body to:
(A) be present at a single anchor location for the meeting; and
(B) vote to approve establishment of an electronic meeting in order to include other members of the public body through an electronic connection;
(iii) require a request for an electronic meeting to be made by a member of a public body up to three days prior to the meeting to allow for arrangements to be made for the electronic meeting;
(iv) restrict the number of separate connections for members of the public body that are allowed for an electronic meeting based on available equipment capability;
(v) if the public body is statutorily authorized to allow a member of the public body to act by proxy, establish the conditions under which a member may vote or take other action by proxy; or
(vi) establish other procedures, limitations, or conditions governing electronic meetings not in conflict with this section.
(3) A public body that convenes and conducts an electronic meeting shall:
(a) give public notice of the electronic meeting in accordance with Section 52-4-202;
(b) except for an electronic meeting described in Subsection (5), post written notice of the electronic meeting at the anchor location; and
(c) except as otherwise provided in a rule of the Legislature applicable to the public body, at least 24 hours before the electronic meeting is scheduled to begin, provide each member of the public body a description of how to electronically connect to the meeting.
(4)

(a) Except as provided in Subsection (5), a public body that convenes and conducts an electronic meeting shall provide space and facilities at an anchor location for members of the public to attend the open portions of the meeting.

(b) A public body that convenes and conducts an electronic meeting may provide means by which members of the public who are not physically present at the anchor location may attend the meeting remotely by electronic means.

(5) Subsection (4)(a) does not apply to an electronic meeting if:

(a)

(i) the chair of the public body determines that:

(A) conducting the meeting as provided in Subsection (4)(a) presents a substantial risk to the health or safety of those present or who would otherwise be present at the anchor location; or

(B) the location where the public body would normally meet has been ordered closed to the public for health or safety reasons; and

(ii) the public notice for the meeting includes:

(A) a statement describing the chair's determination under Subsection (5)(a)(i);

(B) a summary of the facts upon which the chair's determination is based; and

(C) information on how a member of the public may attend the meeting remotely by electronic means; or

(b)

(i) during the course of the electronic meeting, the chair:

(A) determines that continuing to conduct the electronic meeting as provided in Subsection (4)(a) presents a substantial risk to the health or safety of those present at the anchor location; and

(B) announces during the electronic meeting the chair's determination under Subsection (5)(b)(i)(A) and states a summary of the facts upon which the determination is made; and

(ii) in convening the electronic meeting, the public body has provided means by which members of the public who are not physically present at the anchor location may attend the electronic meeting remotely by electronic means.

(6) A determination under Subsection (5)(a)(i) expires 30 days after the day on which the chair of the public body makes the determination.

(7) Compliance with the provisions of this section by a public body constitutes full and complete compliance by the public body with the corresponding provisions of Sections 52-4-201 and 52-4-202.

(8) Unless a public body adopts a resolution, rule, or ordinance described in Subsection (2)(c)(v), a public body that is conducting an electronic meeting may not allow a member to vote or otherwise act by proxy.

(9) Except for a unanimous vote, a public body that is conducting an electronic meeting shall take all votes by roll call.

Amended by Chapter 24, 2022 General Session
Amended by Chapter 402, 2022 General Session

52-4-208 Chance or social n[illegible]js.

(1) This chapter does not apply to any chance meeting or a social meeting.

(2) A chance meeting or social meeting may not be used to circumvent the provisions of this chapter.

Enacted by Chapter 14, 2006 General Session

52-4-209 Electronic meetings for charter school board.

(1) Notwithstanding the definitions provided in Section 52-4-103 for this chapter, as used in this section:

(a) "Anchor location" means a physical location where:

(i) the charter school board would normally meet if the charter school board were not holding an electronic meeting; and

(ii) space, a facility, and technology are provided to the public to monitor and, if public comment is allowed, to participate in an electronic meeting during regular business hours.

(b) "Charter school board" means the governing board of a school created under Title 53G, Chapter 5, Charter Schools.

(c) "Meeting" means the convening of a charter school board:

(i) with a quorum who:

(A) monitors a website at least once during the electronic meeting; and

(B) casts a vote on a website, if a vote is taken; and

(ii) for the purpose of discussing, receiving comments from the public about, or acting upon a matter over which the charter school board has jurisdiction or advisory power.

(d) "Monitor" means to:

(i) read all the content added to a website by the public or a charter school board member; and

(ii) view a vote cast by a charter school board member on a website.

(e) "Participate" means to add content to a website.

(2)

(a) A charter school board may convene and conduct an electronic meeting in accordance with Section 52-4-207.

(b) A charter school board may convene and conduct an electronic meeting in accordance with this section that is in writing on a website if:

(i) the chair verifies that a quorum monitors the website;

(ii) the content of the website is available to the public;

(iii) the chair controls the times in which a charter school board member or the public participates; and

(iv) the chair requires a person to identify himself or herself if the person:

(A) participates; or

(B) casts a vote as a charter school board member.

(3) A charter school that conducts an electronic meeting under this section shall:

(a) give public notice of the electronic meeting:

(i) in accordance with Section 52-4-202; and

(ii) by posting written notice at the anchor location as required under Section 52-4-207;

(b) in addition to giving public notice required by Subsection (3)(a), provide:

(i) notice of the electronic meeting to the members of the charter school board at least 24 hours before the meeting so that they may participate in and be counted as present for all purposes, including the determination that a quorum is present;

(ii) a description of how the members and the public may be connected to the electronic meeting;

(iii) a start and end time for the meeting, which shall be no longer than 5 days; and

(iv) a start and end time for when a vote will be taken in an electronic meeting, which shall be no longer than four hours; and

(c) provide an anchor location.

(4) The chair shall:
(a) not allow anyone to participate from the time the notice described in Subsection (3)(b)(iv) is given until the end time for when a vote will be taken; and
(b) allow a charter school board member to change a vote until the end time for when a vote will be taken.
(5) During the time in which a vote may be taken, a charter school board member may not communicate in any way with any person regarding an issue over which the charter school board has jurisdiction.
(6) A charter school conducting an electronic meeting under this section may not close a meeting as otherwise allowed under this part.
(7)
(a) Written minutes shall be kept of an electronic meeting conducted as required in Section 52-4-203.
(b)
(i) Notwithstanding Section 52-4-203, a recording is not required of an electronic meeting described in Subsection (2)(b).
(ii) All of the content of the website shall be kept for an electronic meeting conducted under this section.
(c) Written minutes are the official record of action taken at an electronic meeting as required in Section 52-4-203.
(8)
(a) A charter school board shall ensure that the website used to conduct an electronic meeting:
(i) is secure; and
(ii) provides with reasonably certainty the identity of a charter school board member who logs on, adds content, or casts a vote on the website.
(b) A person is guilty of a class B misdemeanor if the person falsely identifies himself or herself as required by Subsection (2)(b)(iv).
(9) Compliance with the provisions of this section by a charter school constitutes full and complete compliance by the public body with the corresponding provisions of Sections 52-4-201 and 52-4-202.

Amended by Chapter 415, 2018 General Session

52-4-210 Electronic message transmissions.

Nothing in this chapter shall be construed to restrict a member of a public body from transmitting an electronic message to other members of the public body at a time when the public body is not convened in an open meeting.

Enacted by Chapter 25, 2011 General Session

Part 3
Enforcement

52-4-301 Disruption of meetings.

This chapter does not prohibit the removal of any person from a meeting, if the person willfully disrupts the meeting to the extent that orderly conduct is seriously compromised.

Enacted by Chapter 14, 2006 General Session

52-4-302 Suit to void final action -- Limitation -- Exceptions.

(1)
(a) Any final action taken in violation of Section 52-4-201, 52-4-202, 52-4-207, or 52-4-209 is voidable by a court of competent jurisdiction.
(b) A court may not void a final action taken by a public body for failure to comply with the posting written notice requirements under Subsection 52-4-202(3)(a)(i)(B) if:
(i) the posting is made for a meeting that is held before April 1, 2009; or
(ii)
(A) the public body otherwise complies with the provisions of Section 52-4-202; and
(B) the failure was a result of unforeseen Internet hosting or communication technology failure.

(2) Except as provided under Subsection (3), a suit to void final action shall be commenced within 90 days after the date of the action.

(3) A suit to void final action concerning the issuance of bonds, notes, or other evidences of indebtedness shall be commenced within 30 days after the date of the action.

Amended by Chapter 403, 2012 General Session

52-4-303 Enforcement of chapter -- Suit to compel compliance.

(1) The attorney general and county attorneys of the state shall enforce this chapter.

(2) The attorney general shall, on at least a yearly basis, provide notice to all public bodies that are subject to this chapter of any material changes to the requirements for the conduct of meetings under this chapter.

(3) A person denied any right under this chapter may commence suit in a court of competent jurisdiction to:
(a) compel compliance with or enjoin violations of this chapter; or
(b) determine the chapter's applicability to discussions or decisions of a public body.

(4) The court may award reasonable attorney fees and court costs to a successful plaintiff.

Renumbered and Amended by Chapter 14, 2006 General Session
Amended by Chapter 263, 2006 General Session

52-4-304 Action challenging closed meeting.

(1) Notwithstanding the procedure established under Subsection 63G-2-202(7), in any action brought under the authority of this chapter to challenge the legality of a closed meeting held by a public body, the court shall:
(a) review the recording or written minutes of the closed meeting in camera; and
(b) decide the legality of the closed meeting.

(2)
(a) If the judge determines that the public body did not violate Section 52-4-204, 52-4-205, or 52-4-206 regarding closed meetings, the judge shall dismiss the case without disclosing or revealing any information from the recording or minutes of the closed meeting.
(b) If the judge determines that the public body violated Section 52-4-204, 52-4-205, or 52-4-206 regarding closed meetings, the judge shall publicly disclose or reveal from the recording

or minutes of the closed meeting all information about the portion of the meeting that was illegally closed.

(3) Nothing in this section may be construed to affect the ability of a public body to reclassify a record, as defined in Section 63G-2-103, as provided in Section 63G-2-307.

Amended by Chapter 425, 2018 General Session

52-4-305 Criminal penalty for closed meeting violation.

In addition to any other penalty under this chapter, a member of a public body who knowingly or intentionally violates or who knowingly or intentionally abets or advises a violation of any of the closed meeting provisions of this chapter is guilty of a class B misdemeanor.

Enacted by Chapter 263, 2006 General Session

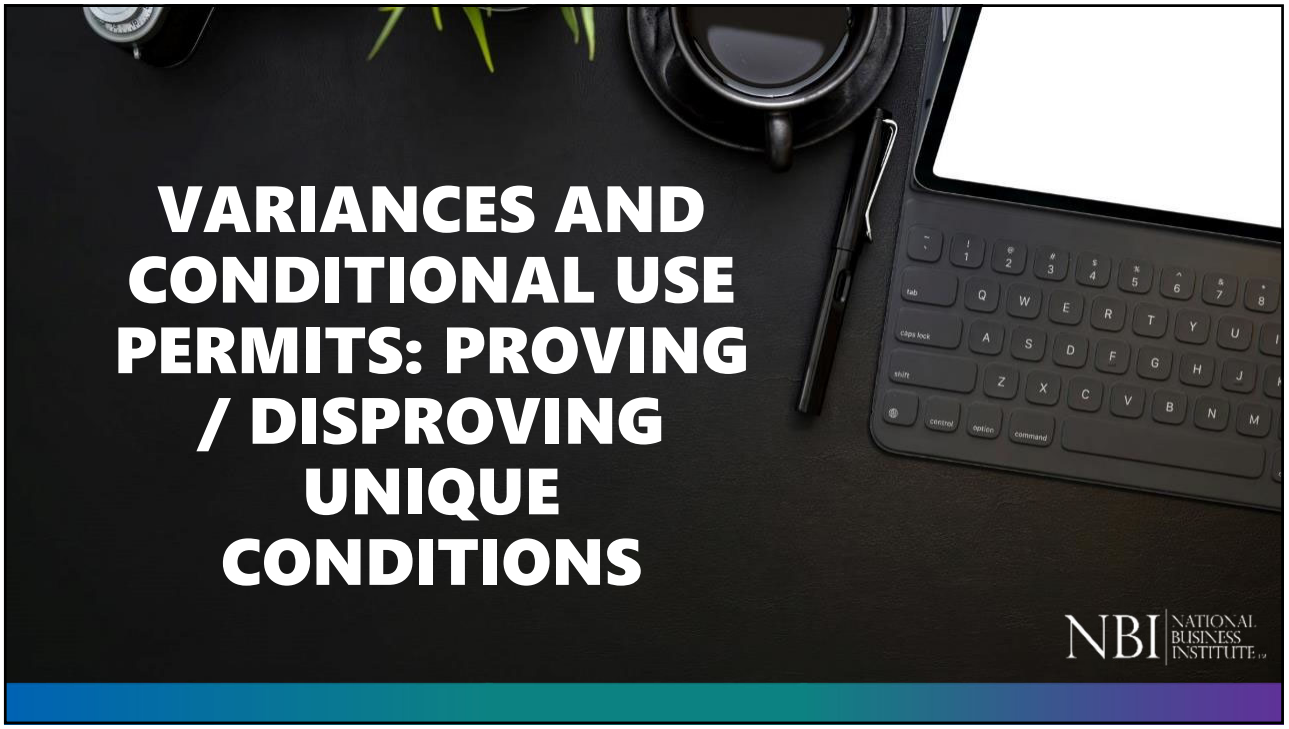
Variances and Conditional Use Permits: Proving/Disproving Unique Conditions

Submitted by Scott Sabey

VARIANCES AND CONDITIONAL USE PERMITS: PROVING/DISPROVING UNIQUE CONDITIONS

SCOTT R. SABEY
Shareholder
Fabian VanCott
215 South State Street, Suite 1200
Salt Lake City, UT 84111-2323
Phone: 801.323.2204
ssabey@fabianvancott.com

www.fabianvancott.com



LUDMA

Land Use, Development, and Management Act

All authority to regulate land use lies with the State. Local government can only regulate land use as delegated to them under the Code as a County UCA §17-27a-101 et seq., or a Municipality UCA §10-9a-101 et seq.

Conditional Use Permits vs. Variances

- CUPs already anticipated in the zoning Code
- Presumptive approval of CUP request, with reasonable conditions to mitigate negative impacts
- Temporary and conditional by nature

- Variances not anticipated and run contrary to zoning Code
- Higher standard and burden of proof
- Permanent and run with the land if granted.

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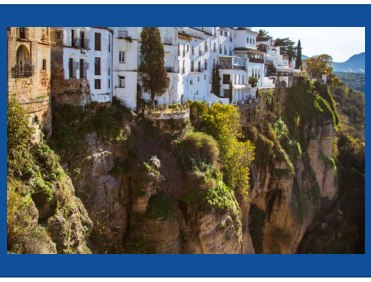
CUP to add a car wash to an existing 24-hour gas station, by a residential neighbourhood



Variance to remove the backyard setback requirement and build right against lot line, because it won't affect next door neighbor.

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Conditional Use Requirements

UCA §10-9a-507 & 17-27a-507

- A land use authority shall approve a conditional use if reasonable conditions are proposed, or can be imposed, to mitigate the reasonably anticipated detrimental effects of the proposed use in accordance with applicable standards.
- The requirement described in Subsection (2)(a)(i) to reasonably mitigate anticipated detrimental effects of the proposed conditional use does not require elimination of the detrimental effects.
- If a land use authority proposes reasonable conditions on a proposed conditional use, the land use authority shall ensure that the conditions are stated on the record and reasonably relate to mitigating the anticipated detrimental effects of the proposed use.
- If the reasonably anticipated detrimental effects of a proposed conditional use cannot be substantially mitigated by the proposal or the imposition of reasonable conditions to achieve compliance with applicable standards, the land use authority may deny the conditional use.

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Variance

UCA §10-9a-702 & §17-27a-702

i. literal enforcement of the ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the land use ordinances;
ii. there are special circumstances attached to the property that do not generally apply to other properties in the same zone;
iii. granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zone;
iv. the variance will not substantially affect the general plan and will not be contrary to the public interest; and,
v. the spirit of the land use ordinance is observed and substantial justice done.

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~~Disproving Detriments to Neighbours~~

- You can't disprove detriments. Subjective, personal, and emotional.
- You can prove reasonable mitigation is possible with conditions.

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Proving/Disproving Conditions are Unreasonable

- First choice: Avoid the issue!
- Get Staff input and develop their support
- Seek Community input and develop their support
- Get neighbours to show up at the hearings to speak in support

Proving/Disproving Conditions are Unreasonable

- When all else fails:
- Anticipate complaints and have arguements opposing undesirable conditions
- Have alternative, reasonable and acceptable conditions to mitigate

Preventing and Addressing Conditional Use Violations

- Take good notes on staff concerns
- Take good notes on public comments and concerns
- Ask staff to detail what they understand the conditions entail
- CUP is ***CONDITIONAL*** meaning it can be taken away!
- Offer additional conditions as alternative to losing it.

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Scott R. Sabey

Fabian VanCott

ssabey@FabianVanCott.com (801) 323-2204

#III. VARIANCES AND CONDITIONAL USE PERMITS: PROVING / DISPROVING UNIQUE CONDITIONS

Under the Land Use, Development, and Management Act ("LUDMA"), there is a separate (but largely identical) Code section for municipalities UCA §10-9a-101 et seq., and for counties UCA §17-27a-101 et seq. Under LUDMA, there is a requirement for cities and counties to have an "Appeal authority" and a "Land use authority" UCA §§ 10-9a-103(5), (30) & 17-27a-103(5), (34). I will refer to both code sections throughout, where applicable.

To be successful in seeking approval of a use different than that allowed by zoning on a particular property, it is crucial to understand the differences between a variance and a conditional use permit. While they seem similar in effect, they are substantially different in the application process and what is granted. A *variance* is a modification to the actual zoning requirement for a specific property, because some unique aspect of the property parcel makes strict application of the requirement burdensome or unfair. It is a permanent change to the code, as it applies to that property (it runs with the land). Examples of such variances include adjustments to zoning standards like setbacks or height limitations. A *conditional use permit* ("CUP") arises when a property owner proposes to use land for purposes already listed as a conditional use in the associated zoning code, or which by the

use's nature could negatively impact surrounding properties. It is a potentially temporary and limited use granted to a property, and since it is not permanent it can be taken away for violation of the conditions. Examples of CUPs include limitations on the scope of uses already allowed under the conditional uses.

A. Complying with Requirements: Use vs. Area Variances

The Conditional Use Permit:

Conditional uses are governed by UCA §§ 10-9a-507 & 17-27a-506. The existence of CUPs are conditioned on the city/county having already chosen to include conditional uses and provision for conditional uses within their land use ordinance. If those are provided for within the land use ordinance, then the city/county must, "approve a conditional use if reasonable conditions are proposed, or can be imposed, to mitigate the reasonably anticipated detrimental effects of the proposed use in accordance with applicable standards." UCA §§ 10-9a-507(2)(a)(i), 17-27a-506(2)(a)(i).

Keep in mind that the land use authority's decision to approve or deny a conditional use is an administrative land use decision. UCA §§ 10-9a-507(3), 17-27a-506(3). Because it is an administrative land use decision, the courts have long held that the decision cannot be based on 'public clamour' *Davis County v. Clearfield City*, 756 P.2d 704 (Utah App. 1988).

Variance:

There is no presumption of approval with a variance, so the standard for approval and burden of proof are much higher than a CUP. A variance can only be granted if the appeal authority finds:

i. literal enforcement of the ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the land use ordinances;
ii. there are special circumstances attached to the property that do not generally apply to other properties in the same zone;
iii. granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zone;
iv. the variance will not substantially affect the general plan and will not be contrary to the public interest; and,
v. the spirit of the land use ordinance is observed and substantial justice done.

§§ UCA 10-9a-702(2)(a) and 17-27a-702(2)(a).

All five criteria must be found in favor of the variance in order for it to be valid. The unreasonable hardship may not be self-imposed or purely economic, and must arise from conditions unique to the property and not the neighborhood. *Id* at (b).

B. Unique Circumstances or Conditions: Providing Supporting Evidence

In determining whether or not there are special circumstances attached to the property under Subsection (2)(a), the appeal authority may find that special circumstances exist only if the special circumstances:

i. relate to the hardship complained of; and
ii. deprive the property of privileges granted to other properties in the same zone.

§§ UCA 10-9a-702(2)(b) and 17-27a-702(2)(b).

C. Disproving Detriments to Neighbors, the Public, etc.

A land use authority must approve a CUP if reasonable conditions can be imposed that will mitigate the detrimental effects of the proposed use. Only if the detrimental effects cannot be mitigated by conditions can the CUP be denied. The best approach is not to argue that there are no detrimental effects, but rather argue how those detrimental effects can be mitigated. For example, where neighbors oppose a noisy car wash being added to a 24-hour gas station the applicant should argue that limiting the car wash hours of operation to normal business hours will mitigate any disruption to the normal ambient noise of daytime business.

D. Navigating Conditional Use Review Process

Because of the loose nature of LUDMA, every city/county can follow its own model for a land use authority, which means you will need to check that locale to find the required process. It is also important to work with staff on the application and seek their input and support. Because the land use body (i.e., the Planning Commission), is made up of citizens who usually lack expertise in land use, they rely heavily on the recommendations of staff in making their decisions.

Because a CUP application is asking for something already anticipated under the zoning ordinance, the application is quite simple. Most CUP applications require a site plan, legal description, plat of the area, building plan, and a letter explaining the reasons and justifications for the granting of such use. This letter should explain the nature of the business, business hours, traffic impacts (if any), etc. to help staff and the land use authority better understand the request. The letter should address why the CUP will not be in contrast to the public interest and whether or not the proposed use will be in keeping with the character of the existing zoning of the area. And of course, the fee.

Because a variance is asking for something not anticipated under the zoning code, more information is required and the burden to meet is much higher. Most variance applications contain the same basic information as a CUP, plus: the type and nature of the variance sought; section of the Code from which you want to vary; description of the hardship if not granted (economic hardship is not a legally valid reason); how the property is different than the surrounding properties; why

the variance will not deviate from the general purpose of the Code; and how the variance conforms with the overall intent of the zoning laws, and why it is 'fair' that the variance be granted.

E. Proving/Disproving Conditions are Unreasonable

This is a subjective standard, and unique to the issue at hand. There are some things you can do to reduce the likelihood of unreasonable conditions being placed on the requested use. Get staff support for the request, and discuss with them the most reasonable mitigations possible. Seek community support, and try to get neighbors to show up and speak on your behalf. Anticipate the nature of complaints likely to be raised, and offer the least burdensome alternatives before the land use authority gets too imaginative in coming up with unreasonable conditions.

F. Preventing and Addressing Conditional Use Violations

A conditional use permit is, by its very nature, *conditional*. Clients frequently have the mistaken view that, once issued the CUP as permanent and the conditions can be ignored. This can be a fatal error to the entire process they went to in getting the CUP in the first place. For example, a car wash running at 2:00 a.m. will surely draw citizen complaints, pulling code enforcement into play, resulting in staff asking the land use authority to pull the conditionally granted use. The conditions were required to mitigate the very damage now being complained of, and failure

to adhere to those conditions is a clear ground upon which the CUP can be revoked.

Appealing Zoning Decisions: Local, Regional, and State Considerations

Submitted by Scott Sabey

Timing is everything

- the Code only allows 10 calendar days to appeal to the appeal authority a written decision by a land use authority. §§ UCA 10-9a-704(2) & 17-27a-704(2), unless the city/county has enacted an ordinance setting the time at more than 10 days
- Prepare appeal before hearing and take it with you in case you lose, give it to staff at the hearing, on the record.

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To Whom do you Appeal?

- Code intentionally loose on structure because of varying size (SLC vs. Ophir)
- Check website for structure and forms.

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How to Appeal

- Appeal with the form and fee designated.
- Build the record! Admit everything you think might be even remotely important.
- A municipal or county ordinance may "require an adversely affected party to present to an appeal authority every theory of relief that the adversely affected party can raise in district court;"
  - Failing to raise it administratively will block it in court.

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Judicial Review

- Exhaust ALL administrative remedies before filing in court.
- Cities/Counties provide no help on filing in Court.
- In complaint detail the exhaustion of administrative remedies.

- Constitutional claims may succeed in getting past failure to exhaust administrative remedies defenses.

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Litigation to Resolve a Zoning Case

- Threats of litigation are counterproductive and meaningless
- Note all administrative failings, accentuate on the record if possible
  - Failings in the decision-making process
  - Using wrong standards for ruling
  - Reliance on public clamour
  - Prejudice or personal interest
- Meet with staff attorney before filing suit with admin failings.

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Specific Tips

- Know the market and politics of the site and community before you start
- Staff is your friend, until they aren't
- Be the river
- Build the record. "The record, the record, the record."

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Scott R. Sabey

ABOUT ME

SCOTT R. SABEY
Shareholder
FabianVanCott
215 South State Street, Suite 1200
Salt Lake City, UT 84111-2323
Phone: 801.323.2204
ssabey@fabianvancott.com
www.fabianvancott.com

#IV. APPEALING ZONING DECISIONS: LOCAL, REGIONAL, AND STATE CONSIDERATIONS

Don't make the common mistake after losing on a zoning request of simply moving to file suit. This approach is almost always fatal to an applicant's cause, for one or both of two reasons: timing; and, exhaustion of administrative remedies. The administrative process also grants an opportunity that might not otherwise exist in court. Because LUDMA has no rules of evidence, administrative appeals allow you the opportunity to build a record with evidence not otherwise admissible. As the old litigator says, "The record, the record, the record!" The legally unsophisticated nature of the administrative process allows you to explore and introduce every bit and type of evidence to support your position. Even if something is not considered legally relevant under the Rules of Evidence, it becomes relevant if it was used as part of the decision-making process by the city/county. View the administrative appeals process as an opportunity rather than an impediment to getting to court.

The judicial branch wants: to be certain that cities/counties have a reasonable chance to address problems; and, to avoid constantly interfere with the legislative branch. As a result, exhaustion of administrative appeals are almost always a mandatory step to filing in court. Since *Holladay Towne Ctr. v. Holladay City*, 2008 Ut App. 301, the requirement of exhausting administrative remedies first, before approaching the court, has been strictly enforced. Of additional concern is that the window for filing an administrative appeal in many cities/counties, is as short as 10 days. (*See Brown v. Sandy City*, 957 P2d 207 (Ut App 1998.)) Once that

window to file an administrative appeal has closed, there can be no administrative appeal nor judicial review (unless it is sought on a claim of error or Constitutional violation).

A. The Appeals Process Step-by-Step

Under Part 7 of the Act, cities and counties are required to, "by ordinance, establish one or more appeal authorities." UCA§§ 10-9a-701(1)(a), (4) & 17-27a-701(1)(a). These appellate authorities are required to, 'hear and decide: (i) requests for variances and (ii) appeals from land use decisions applying land use ordinances,' UCA§§ 10-9a-701(1)(b), (4) & 17-27a-701(1)(b). This loose structure of a mandate allows significant flexibility in how Cities and Counties utilize their "Appeal Authority" to handle zoning appeals, and also to grant variances. That Appeal Authority may be either a full Board of Adjustment or just a hearing officer. The appellate course for Variances and CUPs, can be divided between different appeal authorities. For example, a Planning Commission denial of a CUP could be heard by the Board of Adjustment, or a hearing officer or the City Council. A hearing officer could be set up to only hear appeals, and a Board of Adjustment would handle variance requests, but could hear appeals of the Planning Commission. Each city/county can (and often does) create their own system within Part 7 of the Code to handle appeals, so it is important to review that specific location's appellate process.

Keep in mind during the administrative appeal that a municipal or county ordinance may "require an adversely affected party to present to an appeal

authority every theory of relief that the adversely affected party can raise in district court;" UCA §§ 10-9a-701(4)(c) & 17-27a-701(4)(c). So whatever that party fails to raise before the appeal authority will be barred from being raised before the District Court/.

As indicated above, Part 7 of the Code only allows 10 calendar days to appeal to the appeal authority a written decision by a land use authority. §§ UCA 10-9a-704(2) & 17-27a-704(2), unless the city/county has enacted an ordinance setting the time at more than 10 days. §§ UCA 10-9a-704(1) & 17-27a-704(1). But don't make the common mistake, after losing on a zoning request, of simply moving to file suit. This approach is almost always fatal to an applicant's cause, for one or both of two reasons: failure to exhaust the of administrative remedies, and by the time the court makes such a ruling, the time allowed to bring an appeal has long passed.

B. Obtaining Judicial Review of a Local Decision

Once the administrative remedies have been exhausted, a complaint can be filed in district court. To avoid a Motion to Dismiss, detail the administrative process that was followed before filing in court.

Most commonly, the allegation made in a complaint is that the land use action of the city/county was arbitrary and capricious, and failed to follow the process set out in LUDMA, or the decision was based on public clamor rather than application of the relevant standard under LUDMA.

This standard is also found in the statutory standards of appeal. A number of Utah cases address this standard. For example, in *Patterson v. Utah County Board of Adjustment*, 893 P.2d 602 (Utah Ct. App. 1995), the Utah Court of Appeals declared that "all...ordinances enacted through the exercise of police power are considered valid unless they 'do not rationally promote the public health, safety, morals and welfare." '893 P.2d 606 (quoting *State v. Hutchison*, 624 P.2d 1116, 1127 (Utah 1980)). Similarly, in *Marshall v. Salt Lake City*, 141 P.2d 704, 709 (1943), the Utah Supreme Court had observed that if an ordinance "could promote the general welfare, or even if it is reasonably debatable that it is in the interest of the general welfare" the courts will uphold it.

C. Using Litigation to Resolve a Zoning Case

Some requested uses should be granted, but you know they won't be because of public outcry. In anticipation of the need to litigate, the application process should focus on: meeting the requirements; noting public clamor; faulty reasons for making the defective ruling; and, faults in the decision-making process by the land use authority. Again, because of the unsophisticated nature of these administrative bodies, these types of errors are common. These generally create two different opportunities to resolve the dispute: approaching the city/county attorney with the errors and the likelihood of prevailing in court if an accommodation cannot be reached, and simply going to court. Don't bypass trying to work with the governmental attorney first. I have resolved zoning disputes many times, after losing before the public body, by meeting with the staff attorney and setting forth the case on which they are likely to lose.

D. Specific Tips for Resolving Top Zoning Issues

First, seek input and support from staff. Second, seek community input and generate community support. Third, review all objections and obstacles and look for workable compromises and 'fair' alternatives or conditions to mitigate the complaints.

Ethical Considerations

Submitted by Eduardo V. Martinez

ETHICAL CONSIDERATIONS

A. A. Protecting Confidentiality
B. B. Preventing Conflicts in Interest
C. C. Keeping the Client in the Loop
D. D. Managing Difficult Clients

Eddie Martinez

ABOUT ME

- Eduardo Martinez, Attorney at Law
- Madison, MS

Ethical Considerations

Today, we will cover several facets of ethics that are involved in the practice of law. Each one bears special attention in order to avoid possible confusion regarding the work being done by the attorney. They are:

- Protecting Confidentiality
- Preventing Conflicts of Interest
- Keeping the Client in the Loop
- Managing Difficult Clients

Protecting the confidentiality

The practice of law is unlike most professions. We attempt to meet the client's philosophy of working a legal solution to a problem that you will try to resolve at a price agreed upon. However, we must also ensure that compliance with their information remains between your firm and the client. Without the client's permission, you must protect any aspects of the representation.

To ensure the attorney understands the importance of protecting confidentiality, the UCJA Rule 1.6 has been modified based on the American Bar Associations Model Rule 1.6.

PROTECTING THE CONFIDENTIALITY

Rule 1.6 provides the foundation of what is expected of attorneys practicing in Utah. The critical aspects cannot be overlooked and the first sections set the tone:

(a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).

(b) A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary:

(b)(1) to prevent reasonably certain death or substantial bodily harm;

(b)(2) to prevent the client from committing a crime or fraud that is reasonably certain to result in substantial injury to the financial interests or property of another and in furtherance of which the client has used or is using the lawyer's services;

(b)(3) to prevent, mitigate or rectify substantial injury to the financial interests or property of another that is reasonably certain to result or has resulted from the client's commission of a crime or fraud in furtherance of which the client has used the lawyer's services;

PROTECTING THE CONFIDENTIALITY

In essence, UCJA Rule 1.6 applies while the attorney is representing a client and without the client's informed consent, the attorney cannot divulge any information related to that relationship. However, the Comments section also provides insight as to concerns and interpretations that the Utah Bar has considered.

As in any situation, exceptions exist. For example, the duty of confidentiality continues even after the client-attorney relationship has terminated. See Rule 1.9 comment on the "prohibition against using such information to the disadvantage of the former client". Also, unless specifically instructed, the attorney is able to make disclosures in carrying out the representation of the client. "In some situations, for example, a lawyer may be impliedly authorized to admit a fact that cannot properly be disputed or to make a disclosure that facilitates a satisfactory conclusion to a matter." Also, note that support staff, such as paralegals, are compelled to protect confidential information as well.

PREVENTING CONFLICTS OF INTEREST

A conflict of interest exists as a substantial risk when the lawyer's representation of a client would seriously jeopardize (1) the matter and affected by the attorney's personal interests, or (2) responsibilities to a current or past client, or an entity.

However, the challenge then becomes what governs what we must do to remove all doubt that an ethical consideration is not in existence or that circumstances present a possible impropriety.

PREVENTING CONFLICTS OF INTEREST

Some simple rules I would apply to take into consideration regarding possible conflicts of interest are:

- *Do I have any idea who or what entity has asked me if I will represent them in court or some other activity that will require your firm's attention?*
- *Has anyone in the firm taken any action to initiate an action that indicates that representation is, in fact, in place or is this an inquiry into possible representation?*
- *Who is paying my billable hours?*
- *What is the understanding of who you are being asked to represent? It could be one or several parties. If an organization was formed previously, does another counsel outside the firm already represent them?*

PREVENTING CONFLICTS OF INTEREST

To assist attorneys avoid conflicts, the Utah Bar has established rules that are worth reviewing.

Rule 1.7. Conflict of Interest: Current Clients.

The Comments to the rule remind the reader that conflicts may occur before any representation is undertaken. In such matters, the observation is that the attorney must remember that the client must not be one that would put the attorney in such a situation. Consequently, such representation must be declined, unless per paragraph (3) "unless the lawyer obtains the informed consent of each client under the conditions of paragraph (b)".

PREVENTING CONFLICTS OF INTEREST

Rule 1.8. Conflict of Interest: Current Clients: Specific Rules.

Comments to Rule 1.8 cover many aspects of law practice that may never occur in your practice. Under this rule, the Utah Bar has taken great lengths to ensure that there is no misunderstanding as to what is prohibited in a professional client-attorney relationship. I strongly urge you to assess the comments related to this rule.

PREVENTING CONFLICTS OF INTEREST

Rule 1.9. Duties to Former Clients.

Comments to this rule prevent the attorney from breaking any confidentiality after the legal matter is terminated. Such applies also when the attorney may move on to another firm taking his business matters with him. Remaining steadfast and maintaining the loyalty to the client will go a long way in possible future relationships. Comment [9] states, however, that such level of confidentiality expected "can be waived if the client gives informed consent, which consent must be confirmed in writing under paragraphs (a) and (b)."

PREVENTING CONFLICTS OF INTEREST

Rule 1.10. Imputation of Conflicts of Interest: General Rule.

In the Comments, there are many issues regarding the principle of imputed disqualification that I strongly recommend you review. Items such as the issue of what is a firm is in regards to transitioning from a governmental position to a private practice and vice versa is explored. There are many other concerns that the Utah Bar has explored and disseminated here.

Keeping the Client in the Loop

Consider for a moment how it must feel that in this age of technology and data exchange, your client could not reach you by phone, text, email or by letter. With these concerns, it might lead a client to become difficult. That difficulty then could possibly lead to a bar complaint which could have been averted.

Rule 1.2. Scope of representation and allocation of authority between client and lawyer. Licensed paralegal practitioner notice to be displayed is a recent concern that was posted under the UCJA.

Rule 1.3. Diligence.

A lawyer shall act with reasonable diligence and promptness in representing a client.

Keeping the Client in the Loop

Rule 1.4. Communication.

Looking at these rules on your own will give you an opportunity to consider if you are indeed moving in a positive direction to provide your client every opportunity to feel glad that a trustful relationship is developing. Never assume that the client is satisfied without giving you an opportunity to know this.

"No news is good news" used to work, but not today.

Managing Difficult Clients

Rule 1.3. Diligence answers the question of how to manage difficult client by stating, "A lawyer shall act with reasonable diligence and promptness in representing a client."

The comment also reflects that in (4) "If a lawyer's employment is limited to a specific matter, the relationship terminates when the matter has been resolved." The effect of this is that if the communication cannot resolve the client's concerns, the substantive end of the work must be relayed and enable you to explain your position and enlighten your client. The previous slides mentioned keeping your client informed, even if nothing is ongoing. Do not feel bullied by a overwhelming client. Work the solution, not the problem. Do the right thing.

QUESTIONS

Thank you for spending your time with us.

ETHICAL CONSIDERATIONS

By Eduardo V. Martinez, Esquire

A. Protecting Confidentiality

B. Preventing Conflicts of Interest

C. Keeping the Client in the Loop

D. Managing Difficult Clients

> Apart from values and ethics which have tried to live by, the legacy I would like to leave behind is a very simple one - that I have always stood up for what I consider to be the right thing, and I have tried to be as fair and equitable as I could be.
>
> - Ratan Tata

The work of any attorney is as invaluable as any profession on earth. You may strive to be the best attorney, which takes time to develop, and still survive professional and personal obstacles. However, all that work is nothing if you don't have any ethical principles to indicate that your role is to provide a quality service that is above reproach. Your reputation ensures an invitation to the public to come to you time and time again, as needed, which mirrors Ratan Tata's quote above. Yet, the importance of that legacy must be protected, so that all know you always do the right thing and are fair in your management of your client's business needs.

While the nature of land use and zoning work in Utah, the process of land use approval, variances and conditional use permits are important matters to be sure, the ability to represent yourself and evaluate ethical considerations on behalf of your clients seems to be the paramount feature that many clients respect and expect in dealing with attorneys.

The standard for attorneys has a high benchmark by which to measure expectations required by the state bar. In fact, the Preamble of the Utah Code of Judicial Administration (UCJA) Chapter 13, titled *A Lawyer's Responsibilities* states: [1] A lawyer is a representative of clients, an officer of the legal system and a public citizen having special responsibility for the quality of justice. Every lawyer is responsible to observe the law and the Rules of Professional Conduct, shall take the Lawyer's Oath upon licensure, and shall be subject to the Rules of Lawyer Discipline and Disability.

In that spirit and for this presentation, we explore four facets of ethical consideration that might occur in preparation for land use and zoning: protecting confidentiality, preventing conflicts of interest, keeping the client apprise of your representation, and managing difficult clients.

A. Protecting Confidentiality

One of the things that attorneys are good at is discussing a problem in an intelligently aggressive manner in hopes of finding out ways to resolve a legal issue. Who better than another attorney to provide an assessment of what might be the case at hand? When providing the hypothetical situation, of course, it should be just that. The caveat to this is that while your discussion is important the confidentiality of any information received in the case must be maintained. Whether it be a small town or a large metroplex, your law practice law must be coupled with the ability to maintain the integrity of the profession and the confidentiality of your clients. Clients can be persons or entities depending on how you style and develop your practice. Knowing the client's confidential

information is not a bad thing if you know how to maintain a professional and personal setting when considering it in the context needed. For example, how would you want to deny access to someone who might be coaxing you to release pertinent information that the client would place in trust with you? Being sensitive to what is occurring, you wouldn't. However, what if it is a general question in small talk but the person might be looking for a firm to represent him. Then the situation must be evaluated as to what you are looking how to answer the concern.

Lacking the wisdom of Solomon, today's attorney can rely on technology as a means to support his or her questions. The opposite is also true, that in the absence of pursuing these questions through the same technology, the attorney may fall short of the expectations of the client. Still, your research will invite analysis of the work that may resolve the issues presented.

To ensure the attorney understands the importance of protecting confidentiality, the UCJA Rule 1.6 has been modified based on the American Bar Associations Model Rule 1.6. The UCJA Rule 1.6 Confidentiality of Information states:

(a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).

(b) A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary:

(b)(1) to prevent reasonably certain death or substantial bodily harm;

(b)(2) to prevent the client from committing a crime or fraud that is reasonably certain to result in substantial injury to the financial interests or property of another and in furtherance of which the client has used or is using the lawyer's services;

(b)(3) to prevent, mitigate or rectify substantial injury to the financial interests or property of another that is reasonably certain to result or has resulted from the client's commission of a crime or fraud in furtherance of which the client has used the lawyer's services;

(b)(4) to secure legal advice about the lawyer's compliance with these Rules;

(b)(5) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client;

(b)(6) to comply with other law or a court order; or

(b)(7) to detect and resolve conflicts of interest arising from the lawyer's change of employment or from changes in the composition or ownership of a firm, but only if the revealed information would not compromise the attorney-client privilege or otherwise prejudice the client.

(c) A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.

(d) For purposes of this rule, representation of a client includes counseling a lawyer about the need for or availability of treatment for substance abuse or psychological or emotional problems by members of the Utah State Bar serving on a Utah State Bar endorsed lawyer assistance program.

In essence, UCJA Rule 1.6 applies while the attorney is representing a client and without the client's informed consent, the attorney cannot divulge any information related to that relationship. However, the Comments section also provides insight as to concerns and interpretations that the Utah Bar has considered.

As in any situation, exceptions exist. For example, the duty of confidentiality continues even after the client-attorney relationship has terminated. See Rule 1.9 comment on the "prohibition against using such information to the disadvantage of the former client". Also, unless specifically instructed, the attorney is able to make disclosures in carrying out the representation of the client. "In some situations, for example, a lawyer may be impliedly authorized to admit a fact that cannot properly be disputed or to make a disclosure that facilitates a satisfactory conclusion to a matter."

Lawyers in a firm may, while conducting their practice, reveal information related to a client unless that client directs that only certain attorneys are to have knowledge of the matter.

Take special note of paragraph (c) that demands the attorney take care of the confidential information required to conduct representation but compels those working with attorney, such as paralegals, to also safeguard the confidentiality. Again, ensuring compliance is paramount and the attorney must abide by this rule.

B. Preventing Conflicts of Interest

Ethics, by definition, is the simplest of concepts but may be the hardest to implement. It is the study of how a person or society imparts experiences and knowledge as to how morality will be affected. The most that you can hope for is that each person knows the difference between right and wrong. As in the saying by Tata above, that's it when we discuss a code of morality that we, as attorneys must follow. However, if you look at particular monthly bar magazine or news, you see that many attorneys have lost their bearings and been cited for an ethical violation.

This, in a way, sets the idea of why we take to meet the ethics part of Continuing Legal Education (CLE) for we are human, and mistakes will be made. The merits of such CLE are to prevent any ethics violations from becoming a part of your firm's legacy. That legacy includes being known among your peers and the community that you make the right choices and do equity in your business transactions.

If you read peer-reviewed articles, you might be surprised that a conflict of interest exists as a substantial risk when the lawyer's representation of a client would seriously jeopardize (1) the matter and affected by the attorney's personal interests, or (2) responsibilities to a current or past client, or an entity. However, the challenge then becomes what governs what we must do to remove all doubt that an ethical consideration is not in existence or that circumstances present a possible impropriety.

One way to ensure that the questions are answered is to do a fact-finding mission that removes all doubt so that you won't have to worry about your reputation, a return of revenue back to the potential client or the

opportunity to be the recipient of a bar complaint or a request for mediation or arbitration in a fee dispute challenge through the state bar. Remember, a loss of one client does not mean that they will not recall your professionalism when another person, or entity representative, asks for a recommendation of a reputable law firm. Your actions will speak louder than words can imagine because in our business, goodwill begets goodwill.

In preparing for this presentation, it made sense to compare the American Bar Association (ABA) Model Rules of Professional Responsibility with the UCJA to compare and contrast the wording and meaning of both, as some may be from out of state practices. The relevant UCJA rules are presented and is closely aligned to the ABA rules.

Without clients, a solo practitioner or members of a firm will fail to meet success. As the client base increases, the value of meeting the timetables will be essential to satisfy your clients. In time, your reputation's foundation will be met with belief in keeping your word, as your credibility increases with your talents. This is where you have to look to not only building your clientele, but also ensuring that old and new clients do not put you in a compromising position.

Thus, avoiding any potential conflicts of interest should be a key component of how you do business. Such conflicts must be carefully considered to ensure a viable environment at work among the firm's members and preventing new, but conflicting business from being accepted or in the absence of anything else, receiving a bar complaint for doing so and not taking action. Prior to that, the loss of clients, combined with fees being returned or a claim of a breach of duty starts to look like something that could have been

avoided.

The idea to avoid the conflict with current or future clients or clients that you may not be aware of, is to take positive steps to discover who the client is. The safest way is to do due diligence and establish a prima facie case that each member of the firm – no matter what the size - is taking an intelligently aggressive view of the potential windfall of a new client and the damage that may occur if such diligence is not done correctly. Each firm will determine the best course of action to determine which client is about to be considered. Some simple rules I would apply are:

- *Do I have any idea who or what entity has asked me if I will represent them in court or some other activity that will require your firm's attention?*
- *Has anyone in the firm taken any action to initiate an action that indicates that representation is, in fact, in place or is this an inquiry into possible representation?*
- *Who is paying my billable hours?*
- *What is the understanding of who you are being asked to represent? It could be one or several parties. If an organization was formed previously, does another counsel outside the firm already represent them?*

One way to ensure that the questions are answered is to do a fact-finding mission that removes all doubt so that you won't have to worry about your reputation, a return of revenue back to the potential client or the opportunity to be the recipient of a bar complaint or a request for mediation

or arbitration in a fee dispute challenge through the state bar. In an effort to help, Appendix 1 is as a good a set of checklists that I have researched. The credit belongs to the open source location on the internet clarkcunningham.org/FLP/ConflictsChecklists-GilsBar.pdf and asks many more questions that you can apply as you feel comfortable with. There is a Sample Conflict of Interest Informed Consent Letter and Sample Conflict of Interest Disengagement Letter, which will help your firm display a professional rigor and means to establish your firm as an ethical body. Remember, a loss of one client does not mean that they will not recall your professionalism when another person, or entity representative, asks for a recommendation of a reputable law firm. Your actions will speak louder than words can imagine because in our business, goodwill begets goodwill.

To assist attorneys avoid conflicts, the Utah Bar has established rules that are worth reviewing.

Rule 1.7. Conflict of Interest: Current Clients.

Effective: 5/1/2019

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

(a)(1) The representation of one client will be directly adverse to another client; or

(a)(2) There is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

(b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:

(b)(1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;

(b)(2) the representation is not prohibited by law;

(b)(3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and

(b)(4) each affected client gives informed consent, confirmed in writing.

The Comments to the rule remind the reader that conflicts may occur before any representation is undertaken. In such matters, the observation is that the attorney must remember that the client must not be one that would put the attorney in such a situation. Consequently, such representation must be declined, unless per paragraph (3) "unless the lawyer obtains the informed consent of each client under the conditions of paragraph (b)".

Comment [5] mentions that "Depending on the circumstances, the lawyer may have the option to withdraw from one of the representations in order to avoid the conflict. The lawyer must seek court approval where necessary and take steps to minimize harm to the clients." Again, the removal of the appearance of any conflict remains with the attorney to resolve and preserve any confidentiality of the client during such withdrawal of representation.

Rule 1.8. Conflict of Interest: Current Clients: Specific Rules.

Effective: 11/1/2017

(a) A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless:

(a)(1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing in a manner that can be reasonably understood by the client;

(a)(2) the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel on the transaction; and

(a)(3) the client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction.

(b) A lawyer shall not use information relating to representation of a client to the disadvantage of the client unless the client gives informed consent, except as permitted or required by these Rules.

(c) A lawyer shall not solicit any substantial gift from a client, including a testamentary gift or prepare on behalf of a client an instrument giving the lawyer or a person related to the lawyer any substantial gift unless the lawyer or other recipient of the gift is related to the client. For purpose of this paragraph, related persons include a spouse, child, grandchild, parent, grandparent or other relative

or individual with whom the lawyer or the client maintains a close, familial relationship.

(d) Prior to the conclusion of representation of a client, a lawyer shall not make or negotiate an agreement giving the lawyer literary or media rights to a portrayal or an account based in substantial part on information relating to the representation.

(e) A lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation, except that:

(e)(1) a lawyer may advance court costs and expenses of litigation, the repayment of which may be contingent on the outcome of the matter; and

(e)(2) a lawyer representing an indigent client may pay court costs and expenses of litigation, and minor expenses reasonably connected to the litigation, on behalf of the client.

(f) A lawyer shall not accept compensation for representing a client from one other than the client unless:

(f)(1) the client gives informed consent;

(f)(2) there is no interference with the lawyer's independence of professional judgment or with the client-lawyer relationship; and

(f)(3) information relating to representation of a client is protected as required by Rule 1.6.

(g) A lawyer who represents two or more clients shall not participate in making an aggregate settlement of the claims of or against the clients or in a criminal case

an aggregated agreement as to guilty or nolo contendere pleas, unless each client gives informed consent, in writing signed by the client. The lawyer's disclosure shall include the existence and nature of all the claims or pleas involved and of the participation of each person in the settlement.

(h) A lawyer shall not:

(h)(1) make an agreement prospectively limiting the lawyer's liability to a client for malpractice unless the client is independently represented in making the agreement; or

(h)(2) settle a claim or potential claim for such liability with an unrepresented client or former client unless that person is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel in connection therewith.

(i) A lawyer shall not acquire a proprietary interest in the cause of action or subject matter of litigation the lawyer is conducting for a client, except that the lawyer may:

(i)(1) acquire a lien authorized by law to secure the lawyer's fee or expenses; and

(i)(2) contract with a client for a reasonable contingent fee in a civil case.

(j) A lawyer shall not engage in sexual relations with a client that exploit the lawyer-client relationship. For the purposes of this Rule:

(j)(1) "sexual relations" means sexual intercourse or the touching of an intimate part of another person for the purpose of sexual arousal, gratification, or abuse; and

(j)(2) except for a spousal relationship or a sexual relationship that existed at the commencement of the lawyer-client relationship, sexual relations between the lawyer and the client shall be presumed to be exploitive. This presumption is rebuttable.

(k) While lawyers are associated in a firm, a prohibition in the foregoing paragraphs (a) through (i) that applies to any one of them shall apply to all of them.

Comments to Rule 1.8 cover many aspects of law practice that may never occur in your practice. Under this rule, the Utah Bar has taken great lengths to ensure that there is no misunderstanding as to what is prohibited in a professional client-attorney relationship. I strongly urge you to assess the comments related to this rule.

Rule 1.9. Duties to Former Clients.

Effective: 11/1/2017

(a) A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in writing.

(b) A lawyer shall not knowingly represent a person in the same or a substantially related matter in which a firm with which the lawyer formerly was associated had previously represented a client

(b)(1) whose interests are materially adverse to that person; and

(b)(2) about whom the lawyer had acquired information protected by Rules 1.6 and 1.9(c) that is material to the matter; unless the former client gives informed consent, confirmed in writing.

(c) A lawyer who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter:

(c)(1) use information relating to the representation to the disadvantage of the former client except as these Rules would permit or require with respect to a client, or when the information has become generally known; or

(c)(2) reveal information relating to the representation except as these Rules would permit or require with respect to a client.

Comments to this rule prevent the attorney from breaking any confidentiality after the legal matter is terminated. Such applies also when the attorney may move on to another firm taking his business matters with him. Remaining steadfast and maintaining the loyalty to the client will go a long way in possible future relationships. Comment [9] states, however, that such level of confidentiality expected "can be waived if the client gives informed consent, which consent must be confirmed in writing under paragraphs (a) and (b)."

Rule 1.10. Imputation of Conflicts of Interest: General Rule.

Effective: 5/1/2019

(a) While lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rules 1.7 or 1.9, unless the prohibition is based on a personal interest of the prohibited lawyer and does not present a significant risk of materially limiting the representation of the client by the remaining lawyers in the firm.

(b) When a lawyer has terminated an association with a firm, the firm is not prohibited from thereafter representing a person with interests materially adverse to those of a client represented by the formerly associated lawyer and not currently represented by the firm, unless:

(b)(1) the matter is the same or substantially related to that in which the formerly associated lawyer represented the client; and

(b)(2) any lawyer remaining in the firm has information protected by Rules 1.6 and 1.9(c) that is material to the matter.

(c) When a lawyer becomes associated with a firm, no lawyer associated in the firm shall knowingly represent a person in a matter in which that lawyer is disqualified under Rule 1.9 unless:

(c)(1) the personally disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom, and

(c)(2) written notice is promptly given to any affected former client.

(d) A disqualification prescribed by this Rule may be waived by the affected client under the conditions stated in Rule 1.7.

(e) The disqualification of lawyers associated in a firm with former or current government lawyers is governed by Rule 1.11.

(f) An office of government lawyers who serve as counsel to a governmental entity such as the office of the Utah Attorney General, the United States Attorney, or a district, county, or city attorney does not constitute a "firm" for purposes of Rule 1.10 conflict imputation.

In the Comments, there are many issues regarding the principle of imputed disqualification that I strongly recommend you review. Items such as the issue of what is a firm is in regards to transitioning from a governmental position to a private practice and vice versa is explored. There are many other concerns

that the Utah Bar has explored and disseminated here.

C. Keeping the Client in the Loop

During my time as a mediator for my state bar, one of the largest number of complaints stemmed from the client not having communication whatsoever with the attorney handling the case. That did not include the fact that a member of the attorney's staff may have responded but you can appreciate that there is a huge difference between speaking to the attorney and a paralegal or secretary. Consider for a moment how it must feel that in this age of technology and data exchange, your client could not reach you by phone, text, email or by letter. With these concerns, it might lead a client to become difficult. That difficulty then could possibly lead to a bar complaint which could have been averted.

Rule 1.2. Scope of representation and allocation of authority between client and lawyer. Licensed paralegal practitioner notice to be displayed.

Effective: 5/1/2021

(a) Subject to paragraphs (c) and (d), a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

(b) A lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social or moral views or activities.

(c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.

(d) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.

(e) A licensed paralegal practitioner shall conspicuously display in the licensed paralegal practitioner's office a notice that shall be at least 12 by 20 inches with boldface type or print with each character at least one inch in height and width that contains a statement that the licensed paralegal practitioner is not a lawyer licensed to provide legal services without limitation.

Rule 1.3. Diligence.

A lawyer shall act with reasonable diligence and promptness in representing a client.

Rule 1.4. Communication.

Effective: 11/1/2017

(a) A lawyer shall:

(a)(1) promptly inform the client of any decision or circumstance with respect to which the client's

informed consent, as defined in Rule 1.0(e), is required by these Rules;

(a)(2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;

(a)(3) keep the client reasonably informed about the status of the matter;

(a)(4) promptly comply with reasonable requests for information; and

(a)(5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

While each rule above has comments related to the details of keeping the client informed, they bear reviewing. To remind you how to communicate with your client goes outside the scope of this presentation. However, it is prudent to ensure that you keep your staff informed that every client deserves an update, even if nothing is going on. This one step alone will ensure that the client remains informed as to the progress of their legal matter. One of the things I learned about, as a mediator for my bar, is that a primary bar complaint was that the attorney hardly interacted with the client. This included the situation where there was nothing to report and so the silence was deafening, while the attorney normally followed the adage, "No news is good news." Try to avoid this confusion

with a letter, email, or phone call or whatever means the client has directed a preference for and just detail the status of the work.

D. Managing Difficult Clients

By now, you have maintained enough contact with a client, your dedication to the legal process and issue are above reproach, your staff has met the standard to keep communications with that client and your fees are billed as agreed. That should be enough, right? Wrong in the eyes of the client and now a menacing cloud of mistrust arises. What do you do when you think you have done due diligence? Again, Rule 1.3. Diligence answers the question by stating, "A lawyer shall act with reasonable diligence and promptness in representing a client."

The comment also reflects that in (4) "If a lawyer's employment is limited to a specific matter, the relationship terminates when the matter has been resolved." The effect of this is that if the communication cannot resolve the client's concerns, the substantive end of the work must be relayed and enable you to explain your position and enlighten your client. In other words, what was bargained for has been met. Once you agree, memorialize it in a closing letter that terminates the relationship. Your participation in the process leading to a close out is in your hands and Rule 1.3 enables you to make intelligently aggressive decisions on how to run your practice and your process to meet the goals of the client.

Earlier, I mentioned that the work products of the attorney are as invaluable as any other profession. Care must be provided to the difficult client to learn why a chasm of tenseness is observed on your end. Talk with the client to

see if something you said or did, or failed to meet in their view, triggered the perception. It may be something meaningless from your perspective but to the paying client, it is everything. If you don't resolve it quickly and to both the client's and your satisfaction, the fact remains that any recommendation of an attorney by the client to a friend or acquaintance, may not be in your favor. One of the tools I have used is to just pick up the phone and say hello to the client, even if nothing is happening in the case at the time. Just that gesture alone will surprise the client. While not everyone is familiar with how you practice law, the difficult client may change and be your most important advocate.

Closing Remarks

The issue of practicing law and maintaining an ethical posture is indicative of whether a firm will survive or be left to disappear on its own accord. Deciding early in your career to follow law, you took the state and national exams regarding ethics to put your mind in the mode of doing due diligence. Do those things that will bring credit to the profession and avoid any stigma of ethical violations that make you look over your shoulder.

Simply, do the right thing!

Conflicts of Interest Checklist

- ❑ All attorneys and staff must disclose necessary information concerning potential conflicts relating to past clients at prior places of employment, but not confidential information.

- ❑ Prior to the initial consultation, the potential clients must disclose all name information, including their other names (*i.e.*, maiden, other marital, etc.), opposing parties' names, and associated persons' and/or entities' names.

- ❑ Thereafter, at the initial consultation, the potential clients must disclose more detailed information in order for a more comprehensive conflicts check to be made.

- ❑ The attorney then performs the conflicts check, reviewing the master client list, the former client list, and the subject matter list, if applicable.

- ❑ The Conflicts Search Results Memo must be circulated to all attorneys and staff for their review and input.

- ❑ Follow up with any attorney or staff member who fails to return the Conflicts Search Results Memo within 24 hours of distribution.

- ❑ Analyze the results of the circulated memo and of the preliminary and comprehensive conflicts checks to determine whether there exists a conflict.

- ❑ If no conflict is found, the new client is entered into the conflict system and sent an engagement letter.

- ❑ If a conflict is found and the attorney is not allowed to accept the representation, send a non-engagement letter explaining the conflict.

- ❑ If a conflict is found and the attorney is allowed to accept the representation:
  - · disclose the circumstances which give rise to the actual or potential conflict;
  - · disclose a description of actual/foreseeable adverse effects of those circumstances;
  - · if the potential conflict arises out of dual or multiple representation, then disclose that no attorney-client privilege exists as between the clients;
  - · if the potential conflict arises out of a past representation (*i.e.*, past representation of adverse party in an unrelated matter), then disclose all pertinent non-privileged facts necessary for the potential client to make an informed decision as to whether to waive the conflict.

- ❑ Obtain written informed consent after advising the potential client to seek independent legal advice regarding the waiver.[1]

- ❑ If a conflict is found, all necessary disclosures are made, and written informed consent is obtained, accept the representation by sending an engagement letter.[2]

- ❑ Once representation has been accepted, perform another conflicts check each time a new party enters into the legal matter. If the new party creates a conflict, withdraw and send a disengagement letter.

[1] Remember, some conflicts cannot be waived, even though an informed consent was obtained.

[2] However, we recommend that you do *not* accept the representation because informed consents do not cure all conflicts and there may still be a violation of the ethical rules.

Conflicts of Interest Search Form

(Privileged and Confidential)

The following must be completed by the potential client, attorneys and staff:

1. Obtain all the information on the potential client:

   Name _____

   Other names _____

   Nicknames _____

   Address _____

   Spouse's name _____

   Spouse's other names _____

   Spouse's nicknames _____

   Address (if different) _____

   Opposing parties' names _____

   Associated persons or entities _____

Potential client stops here and Preliminary Conflict Check performed. If no conflict is found, potential client completes § 2 and then attorneys and staff complete the remainder.

2. Determine which area of law is involved and write in the names, nicknames or other names of the associated persons/entities involved:

   If litigation matter, who is the:

   Insured _____

   Plaintiff(s) _____

   Defendant(s) _____

   Insurer _____

   Tutor/minor _____

   Expert witness(es) _____

If divorce matter, who is the:

Client _____

Spouse _____

Child(ren) _____

What is/are the age/ages of the child(ren)? _____

_____

If corporate/business/real estate matter, who is the:

Owner(s)/spouse(s) _____

Buyer(s) _____

Partner(s) _____

Seller(s) _____

Officer(s) _____

Directors _____

Shareholder(s) _____

Subsidiaries/affiliates _____

Key employees _____

Property address(es) _____

Any opposing party in a transaction _____

If probate matter, who is the:

Deceased _____

Spouse/child(ren)/heir(s)/legatee(s) _____

Succession representative _____

Attorney for succession representative _____

If worker's compensation matter, who is the:

Injured worker _____

Employer _____

Insurer _____

If estate planning matter, who is the:

Testator/testatrix _____

Spouse/child(ren)/heir(s)/legatee(s) _____

Trustee _____

If criminal matter, who is the:

Accused _____

Victim(s) _____

Witness(es) _____

Co-Defendant(s) _____

If bankruptcy matter, who is the:

Client _____

Creditor(s) _____

Spouse _____

Results of Search

Conflict System Search done by _____

Title _____ Relationship to firm _____

Instructions:

- ❑ Duplicate of this form and attached Conflicts Search Results Memo routed to and signed by all attorneys and staff.
- ❑ No conflict found; entered as new client into conflict system and engagement letter sent by _____
- ❑ Conflict found, analyzed, and client accepted (explain reasons)

  _____

  _____

- ❑ Engagement and Informed Consent letters sent by _____
- ❑ Conflict found, client not accepted, non-engagement letter sent by _____

Conflicts of Interest Search Results Memo

1. Circulate this form to all attorneys and staff, making sure to attach the completed Conflicts of Interest Search Form.

2. Give a deadline for the return of the memo: _____

3. Have all attorneys and staff answer all of the following questions:

   a. Do you have any business interest with:

      Client? Yes ___ No ___

      Anyone associated with client? Yes ___ No ___

      Anyone associated with persons/entities? Yes No___ ___

   b. Do you have any personal interests with:

      Client? Yes ___ No ___

      Anyone associated with client? Yes ___ No ___

      Anyone associated with persons/entities? Yes No___ ___

   c. Have you had any current or past relationship, affiliation or association with this client?

   Yes No___ ___

   d. Do you know of any reason we should not represent this client? Yes ___ No ___

If you have answered yes to any of the above, please give details below:

_____

_____

_____

Signature of Attorney/Staff: _____ Date: _____

Sample Conflict of Interest Non-Engagement Letter

June 20, 20—

Mr. John J. Non-Client
123 Main Street
Anytown, Louisiana 45678

Re: Conference on June 19, 20—;
Potential Personal Injury Claim against Mr. Smith.

Dear Mr. Non-Client:

I enjoyed meeting with you recently regarding your potential claim against Mr. Smith. As we discussed, I have a possible conflict of interest. Although we did not discuss the particulars of your potential claim, it does not appear to be appropriate under the ethical rules for our firm to represent you. We must therefore decline to represent you. Under these circumstances, you should consult other counsel immediately to determine your rights and interests. Please keep in mind that you may be facing important deadlines, so you should not delay in contacting other counsel.

Thank you for offering us this engagement. If we may be of service to you in other matters in the future, we hope you will contact us then.

Sincerely,

FIRM NAME

_____

Attorney Name

Sample Conflict of Interest Informed Consent Letter

June 20, 20—

Mr. John J. Potential Client
123 Main Street
Anytown, Louisiana 45678

Dear Mr. Potential Client:

Below is your Informed Consent of our firm representing you in a business acquisition, to which you may agree after careful consideration of all the facts, even though there are actual and potential conflicts of interest. At this time, we wish to remind you of the relevant information with respect to the potential conflict, which you should use to make your decision.

- This representation will . . . .
- This representation will also . . . .
- "_____. . . ."

We previously recommended to you in writing that you seek independent legal advice regarding the conflicts. Having followed that advice, you sought independent legal counsel and were apprised of conflicts that exist and may arise. Nevertheless, if you knowingly and voluntarily consent to representation by the firm, (FIRM NAME), and waive any and all actual and potential conflicts of interest, please sign below and return this letter to us.

[Optional]
[Additionally, Attorney Smith has been disqualified from taking any role in the representation of your case and will be screened from any participation in the matter. He will not be given any part of the legal fee, nor will he be allowed to reveal any of your confidential information he obtained while working at his prior law firm.]

All affected clients have been put on notice by being sent a copy of this informed consent letter.

Sincerely,

FIRM NAME

_____
Attorney Name

Client Signature _____

Client Name Typed _____

Date _____

Sample Conflict of Interest Disengagement Letter

June 20, 20—

Mr. John J. Former Client
123 Main Street
Anytown, Louisiana 45678

Re: File Subject or Matter Description
Calcasieu Parish, Louisiana

Dear Mr. Former Client:

Thank you for allowing us to be of service to you in the above-captioned matter. The joining of A.B. Sea, Inc. in your lawsuit has created a conflict of interest for our firm because one of our partners, (Attorney Name), has been and continues to be A.B. Sea's primary counsel in other matters. Your continued representation would result in an adverse conflict of interest.[1] Therefore, we must withdraw from representation of you at this time. Additionally, Mr. Wisdom will refer A.B. Sea to independent counsel for representation in your matter.

We are enclosing your entire file with this letter, as well as a check in the amount of $750.00, representing a refund to you of the amount of the advance deposit which has not been earned. You should contact other counsel immediately to further pursue (and protect) your interests in this matter. Your new counsel should have adequate time to serve your best interests, and you should provide said counsel with your file for necessary review. A complete status of the matter with deadlines noted is attached.

Our final invoice for service rendered is enclosed. It was a pleasure serving you, and we wish you the best in all your future endeavors.

Sincerely,

FIRM NAME

_____

Attorney Name

Enclosures

(CAVEAT: Make sure any withdrawal/termination is in compliance with Rule 1.16 of the Rules of Professional Conduct.)

[1] A conflict that is reasonably anticipated, although not present at the inception of the representation, can be waived in advance with adequate disclosure and consent by the client.

Conflict of Interest Financial Assistance Agreement

June 20, 20—

Mr. John J. Client
123 Main Street
Anytown, Louisiana 45678

Dear Mr. Client:

This is a Financial Assistance Agreement between you, Client, and our firm, outlining the terms by which this firm may advance you financial assistance in connection with pending or contemplated litigation, as permitted by Rules 1.4 (c) and 1.8 (e) of the Rules of Professional Conduct and jurisprudence.

Subject to your written consent below, we may advance you any or all of the following:

- Court costs and expenses of litigation, including but not limited to: Filing fees; deposition costs; expert witness fees; transcript costs; witness fees; copy costs; photographic, electronic, or digital evidence production; investigation fees; related travel expenses; litigation related medical expenses; and any other specific expense directly related to our representation. [Your repayment of these expenses advanced by our firm is contingent on the outcome of the matter for which you hired our firm, provided these expenses were reasonably incurred] or [Your repayment of these expenses advanced by our firm is not contingent upon the outcome of the matter for which you hired our firm, and you remain liable to us for these expenses]. We will provide you with a written statement of our specific financial assistance and the timeframe within which you have to repay it;
- [If you are an indigent client, and are unable to pay for legal representation, our firm may pay court costs and expenses of litigation on your behalf];
- Actual invoiced costs incurred solely for purposes of our representation: Computer legal research charges; long distance telephone expenses; postage charges; copying charges; mileage and outside courier service charges .We *cannot* pass on to you any overhead costs that may be incurred by us, which may include, but are not limited to: Office rent; utility costs; charges for local telephone services; office supplies; fixed asset expenses; ordinary secretarial and staff services. [However, if you are paying us at an *hourly rate*, and not at a fixed rate or on a contingency basis, we may advance you reasonable charges for paralegal services. If we do advance paralegal services to you, you will be notified at the beginning of the representation.]
- If your are in necessitous circumstances (after a determination by us that without minimal financial assistance, your case would be adversely affected), we may provide financial assistance to you, in addition to court costs and litigation expenses, as follows:
    - You acknowledge that we have not used this advance or loan guarantee as an inducement by us, or anyone acting on our behalf, to secure employment;
    - You acknowledge that neither our firm, nor anyone acting on our behalf, has offered to make advances or loan guarantees prior to being hired by you, nor that we publicized or advertised a willingness to make advances or loan guarantees to you;
    - Financial assistance may not exceed the minimum sum necessary to meet your needs, and/or your spouse's needs, and/or your dependents' needs for food, shelter, utilities,

insurance, non-litigation related medical care and treatment, transportation expenses, education, or other *documented expenses* necessary for living; [Please note that a blanket request for assistance without documented receipts or invoices cannot be honored.]

- You agree that you will not broadcast to others our financial assistance to you.

Subject to your written consent below, we may advance you financial assistance, with the following restrictions:

- Financial assistance that we may provide to you cannot bear interest, fees or charges of any nature;
- We may use our firm's line of credit or loans obtained from financial institutions in which we have no ownership, control and/or security interest (unless our ownership, control and/or security interest of a publicly traded financial institution is less than 15%), provided we make reasonable, good faith efforts to obtain a favorable interest rate;
- In using a line of credit or loan, we may not pass on to you interest charges, including any fees or other charges connected to such loans, in an amount exceeding the actual charge by the third party lender, or ten percentage points (10%) above the bank prime loan rate of interest as reported by the Federal Reserve Board on January 15th of each year in which the loan is outstanding, whichever is less;
- We may only provide a guarantee or security on a loan to you to the extent that the interest charges, including any fees or other charges connected to such loans, do not exceed ten percentage points (10%) above the bank prime loan rate of interest as reported by the Federal Reserve Board on January 15th of each year in which the loan is outstanding;
- Prior to the execution of any settlement documents, approval or any disbursement sheet (as provided in Rule 1.5), or upon submission of a bill for our services, we will provide you with a complete text of Rule 1.8 (e), as re-enacted, of the Louisiana Rules of Professional Conduct, effective date of April 1, 2006;

This Agreement is null unless you date and sign below.

Sincerely,

FIRM NAME

ATTORNEY'S NAME (typed)

_____

ATTORNEY'S SIGNATURE

_____

DATE

CLIENT'S NAME (typed)

_____

CLIENT'S SIGNATURE

_____

DATE

WITNESS NAME (typed)

_____

WITNESS'S SIGNATURE

_____

DATE

GILSBARDM-#219362-v1-Sample_Conflict_of_Interest_Form_for_Financial_Assistance.DOC

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