

CHAPTER 2 GENERAL PROVISIONS

Section 1: PURPOSE

This LUDMO and the regulations and restrictions contained herein are adopted and enacted for the purposes enumerated in CLUDMA, including:

- i) providing for health, safety, and welfare;
- ii) promoting prosperity;
- iii) improving morals, peace, good order, comfort, convenience, and aesthetics;
- iv) protecting tax base;
- v) securing economy in governmental expenditures;
- vi) fostering agricultural and other industries;
- vii) protecting both urban and nonurban development;
- viii) protecting and ensuring access to sunlight for solar energy devices;
- ix) providing fundamental fairness in land use regulation;
- x) facilitating orderly growth and allowing growth in a variety of housing types; and
- xi) protecting property values.

This LUDMO shall be construed to further its purposes and to promote the objectives and characteristics of the respective zones.

Section 2: SHORT TITLE

These ordinances shall be known as the Land Use Development and Management Ordinance (LUDMO) and may be so cited and pleaded. Whenever a reference is made to this code as the San Juan County land use or development code, or to any portion hereof, or to any ordinance of San Juan County, Utah, codified herein, the reference shall apply to all amendments, corrections and additions heretofore, now or hereafter made.

Section 3: AUTHORITY PROVISIONS

It is hereby recognized to be within the authority delegated to San Juan County to approve the subdivision and development of land, amendment of plats or adjustment of lot lines, rezoning of property, amendments to the San Juan County General Plan, and approval of site plans pursuant to the guidance of the San Juan County General Plan and CLUDMA, for the orderly, planned, efficient, and economic development of San Juan County. Unless otherwise designated, the San Juan County legislative body shall be the Land Use Authority for all applications requiring legislative action. Non-legislative actions are delegated as follows:

- A. The Planning Commission shall be the Land Use Authority for:
 1. Conditional Use Permits

2. Minor Plat Amendments (MATCH TO STATE LAW DEFINITION)

- a) Combining two or more lots, all of which are owned by the same owner, and none of which have been dedicated for public use, common use, or a similar designation;
- b) Modification of plat title, notes, or labels so long as they were not placed on the plat due to findings or conditions adopted by the San Juan County legislative body;
- c) Amendments applied for and signed by all affected property owners in the original subdivision and that do not increase density or significantly affect the layout of infrastructure, open space, or common areas; or
- d) Changes to a building envelope consistent with San Juan County Code.

3. Final Subdivision Plats

B. The San Juan County Planning Administrator shall be the Land Use Authority for the following applications unless a public hearing is required:

1. Non-Conforming Use Determinations;
2. Temporary Uses;
3. Home Occupation Certificates;
4. Commercial Site Plans;
5. Commercial Off-Street Parking Reductions;
6. Building Relocations;
7. Building Permits;
8. Boundary Line Adjustments; and
9. Minor Subdivisions.

Section 4: LICENSES TO CONFORM

All departments, officials, and employees of San Juan County authorized to issue land use permits and licenses shall do so in conformance with the provisions of this LUDMO. No land use permit or license for a use, building, or purpose shall be issued where the same would be in conflict with the provisions of this LUDMO. A land use permit or license, if issued in conflict with the provisions of this LUDMO shall be null and void.

Section 5: BUILDING PERMITS REQUIRED

No building or structure shall be constructed, reconstructed, altered, or moved unless either the issuance of a building permit by the San Juan County Planning & Building Department or specifically exempted by Utah Code as acknowledged in writing by the Department. No provision of this LUDMO is intended to exempt a building permit requirement.

Section 6: BUILDING PERMIT APPLICATIONS; LOT PLAN REQUIRED

All applications for building permits for new construction (and not interior remodels) shall be accompanied by:

- A. A lot plan drawn to scale showing the actual dimensions of the lot to be built upon, the size and location of existing buildings, buildings to be erected and existing buildings on adjacent property, and such other information as may be deemed necessary by the San Juan County Planning Administrator or the San Juan County Building Inspector for the enforcement of this LUDMO;
- B. When property boundaries are unclear or undetermined, a complete and accurate legal description of the property that is the subject of the application, together with a certified survey of the property showing any conflict with adjoining property, overlaps, or discrepancies between the legal description and any existing fence lines; and
- C. When the road upon which the lot has frontage is unimproved, the boundaries of said road are not clearly ascertainable, or there is any question by the San Juan County Planning Administrator, San Juan County Building Inspector, or the San Juan County Surveyor whether the physical road is within the platted right of way, a certified survey of the road showing any conflict between the physical and platted right of way is required.

Section 7: PERMITS TO COMPLY WITH LAND USE REGULATIONS

- A. Permits shall not be granted for the construction, reconstruction, or alteration of any building or structure, or for the moving of a building onto a lot, or for the change of the use of any land, building, or structure if such construction, alteration, moving, or change in use violates any of the provisions of any San Juan County ordinance.
- B. No sewer service line and/or wastewater treatment facility, no water service line and/or water facility, or electrical utilities shall be installed if the use served violates this LUDMO.
- C. No electrical utility line shall be installed to serve any parcel or lot without the San Juan County Planning & Building Department's approval of a site plan.

Section 8: PARCELS WITH MULTIPLE ZONES

Parcels with multiple land-use designations may request a zone change of the parcel to the preferred land-use zone designated for the parcel. The applicant's zone change request shall be favored if it is consistent with the current General Plan's intent. An application for a zone change for a parcel with multiple land-use zoning designations is exempt from the map requirements set forth in this LUDMO.

Section 9: CERTIFICATE OF OCCUPANCY AND LAND USE COMPLIANCE

- A. **Unlawful To Occupy** – It shall be unlawful to use or occupy, or to permit the use or occupancy of, any building or premises until a Certificate of Occupancy and land use

compliance shall have been issued for the premises and/or building by San Juan County. It shall also be unlawful to occupy any building which has different use or different occupancy than provided for specifically in the certificate of occupancy and land use compliance.

- B. **Issuance of Certificates** – Unless withheld under this LUDMO or other law, a certificate of occupancy and land use compliance will be issued by the San Juan County Planning & Building Department when a building is completed and has passed final inspection. A new certificate shall be required any time the number of dwelling units increases.
- C. **Information Required on Certificates** – The following information shall be made a part of any certificate of occupancy and land use compliance issued by the San Juan County Planning & Building Department:
1. Residential Certificates
 - a) The number of residential units in the building or buildings. (If there is more than one building, the number of dwelling units should be listed separately for each building.)
 - b) Number of families residing or anticipated to live in the building.
 - c) The number of legal off-street parking spaces, sized to conform to this LUDMO and being provided on the premises.
 - d) A notice directed to the owner of the building or premises that any change in use of the building or premises will require the issuance of a new certificate.
 2. Commercial, Industrial, and Institutional Certificates:
 - a) The proposed maximum number of employees on the premises.
 - b) The number of off-street parking spaces sized to conform to this LUDMO and provided for employees on the site.
 - c) The number of off-street parking spaces sized to conform to this title and provided for customers or visitors.
 - d) The number and type of restroom facilities provided.
 - e) The square foot area within the building used for each separate use.
 - f) A signed certificate by the owner of the building or premises, or his authorized agent, stating that the information and conditions set forth in the application are true and will be maintained upon the site in this condition.
 - g) A notice directed to the owner of the premises stating that a change in use in the intended occupancy of the building will require the issuance of a new certificate.

Section 10: CONSTRUCTION AND USE TO CONFORM TO PLANS

Building permits or certificates of occupancy and land use compliance issued on the basis of plans and specifications approved by the Planning Administrator or Building Inspector authorize only the use, arrangement, and construction set forth in the approved application, plans, and

specifications. The use, arrangement, or construction at variance with that authorized in said plans and specifications shall be deemed a violation of this LUDMO.

Section 11: ENFORCEMENT ACTIONS

The provisions of this LUDMO shall be administered by the San Juan County Planning & Zoning and Building Department under the supervision of the county legislative body. An Enforcement Officer may investigate alleged violations of this LUDMO or conditions or terms of permits and licenses and may initiate enforcement actions if violations are found to exist. An enforcement officer is authorized to make examinations and investigation of all real property in the County, as allowed by law, to determine whether the responsible person is complying with the provisions of this LUDMO. By accepting a land use permit or license from the County, the permittee or licensee agrees to cooperate in compliance examinations and investigations. Such agreement shall be stated in all land use application forms prepared by the County. Upon discovering a violation, the County Attorney's office shall, at its discretion, file enforcement actions in court as necessary. The County's non-enforcement of any of the requirements of this LUDMO or conditions or terms imposed through land use permits or licenses issued by the County shall not operate to waive or estop the County from pursuing later enforcement actions. A permit or license issued in violation of this LUDMO has no force or effect.

- A. **Responsibility for Land Use Violation** – Anyone found to have committed a violation of this LUDMO or any condition or term imposed through this LUDMO is responsible for correcting the violation. In the event the person responsible for a violation cannot be ascertained after the exercise of due diligence, the County may also institute proceedings as allowed by this section or controlling law against the property on which the violation is found.
- B. **Finding of Land Use Violation** – If, after investigating, an enforcement officer has determined that a land use violation exists, the enforcement officer may attempt to have the responsible person correct the violation in accordance with this section. The officer may pursue any remedy or combination of remedies available under this LUDMO, state, or federal. Nothing in this section shall be interpreted to prohibit the County from engaging in its standard prosecution practices without first having to comply with the provisions of this section. In the event a responsible person cannot be ascertained, the County shall post notice on the property on which a land use violation has occurred and may institute proceedings against the property itself as allowed by law.
- C. **Notice of Violation** – Except as otherwise provided by this LUDMO, whenever a land use violation is found to exist and an Enforcement Officer determines action should be taken, the Enforcement Officer shall first serve written notice to the responsible person before other remedies in this section are taken.
 1. The notice of violation shall contain:
 - a) The location of the land use violation, if the same is stationary;

- b) A description of what constitutes the violation;
 - c) A list of the acts necessary to correct the violation ("corrective action");
 - d) A warning period, including a completion date in which the responsible person may cure the violation before civil fines are assessed ;
 - e) A statement of the actions the County may take if the violation is not corrected within the warning period; and
 - f) A statement that the responsible person may enter into a voluntary correction agreement during the warning period to prevent further action by the County.
2. The written notice shall be delivered personally or sent via registered mail to the responsible person's address as shown on the records of the San Juan County Recorder and to any other person who may be responsible for the violation.
 3. The written notice shall serve to start any warning periods provided in this section, commencing upon delivery of notice. If the violation remains uncured once the warning period expires, the civil penalties shall begin to accrue in accordance with this section.
 4. In cases where an Enforcement Officer determines that a delay of enforcement would pose a danger to the public health, safety, or welfare or would otherwise compromise the effective enforcement of this LUDMO, the Enforcement Officer may seek immediate enforcement under **Subsection (F)(2)** without prior written notice.

D. Civil Fines

1. Civil fines shall be assessed against the responsible person for uncorrected land use violations beginning on the day following the completion date (as stated in either the notice of violation or the voluntary corrective action agreement). The amount of such fine shall be at least \$50.00 for each day the violation continues after the completion date.
2. Daily Violation: Each day a violation is continued or maintained after the completion date shall give rise to a separate civil fine. All applicable fines shall cease the day following receipt by the enforcement officer of written notice from the responsible person that the corrective action is complete. The County may waive any fees accrued if corrective action is completed. Within five business days following written notice, the enforcement officer shall inspect and, if compliant, pass off the corrective action as completed or, if not completed, shall apply fines retroactively to the date notification was received and fines shall continue to accrue in accordance with this section.
3. Civil fines assessed under this Section are cumulative. Payment of a civil fine assessed under this section does not relieve the responsible person from the duty to correct the land use violation. The civil fine constitutes a personal obligation of the responsible person or a lien against the subject property, as the case requires.

Any civil fine assessed must be paid to the County within 30 calendar days of notice of its imposition.

4. The San Juan County Attorney is authorized to take appropriate action to negotiate the amount of the civil fine, collect the fine, determine the time period in which the fine shall be paid, and take any other action necessary to resolve the fine.
 5. As directed by the San Juan County Attorney, the County may exercise all lawful means to collect the civil fine, whether in person or in rem. The County may also collect reasonable attorney fees and costs incurred in collecting the civil fine where allowed by law. The County may also collect pre- and post-judgment interest on such civil fines as allowed by law.
 6. The incurrance of civil fines under this section shall not limit the available remedies available to an enforcement officer or the San Juan County Attorney under this Section.
- E. **Voluntary Corrective Action** – An enforcement officer may allow a violator to take voluntary corrective action. Voluntary corrective action allows a violator to correct the land use violation within a specified time and according to specified conditions set by the County in a voluntary corrective action agreement. If the violator completes the voluntary corrective action within the time and according to the terms set by the County, the County will take no further action against the violator for that violation. This enforcement method is discretionary.
1. Contents of a written voluntary corrective action agreement shall include the following:
 - a) The name and address of the violator;
 - b) The street address of the land use violation or a description sufficient to identify the building, structure, premises, or land upon or within which the land use violation exists;
 - c) A description of the land use violation;
 - d) The necessary corrective action to be taken, and a date or time by which correction or abatement must be completed ("completion date"), which period shall not be longer than six months from the date the agreement is entered into;
 - e) An agreement by the violator that the County may inspect the premises as reasonable and as the County deems necessary to determine compliance with the voluntary corrective action;
 - f) An agreement by the violator that, if the terms of the agreement are not met, the County may:
 - i) Issue a civil fine or criminal citation;

- ii) Correct the violation itself and recover its costs and expenses from the violator, including by placing a lien on the involved property; and
 - iii) Pursue any other legal remedy available;
- g. An agreement by the violator waiving any right to appeal the enforcement officer's finding of a land use violation and the specific corrective action required by the voluntary corrective action agreement; and

h. An acknowledgement by the person responsible that failure to comply with the voluntary corrective action agreement may be grounds for criminal prosecution.

- 2. The enforcement officer may grant an extension of time for correcting the land use violation set by the voluntary corrective action agreement if the violator has shown due diligence and/or substantial progress in abating the land use violation but unforeseen circumstances render correction or abatement under the original conditions unattainable.
- 3. The enforcement officer will suspend further enforcement action and monetary fines for the violation once a voluntary corrective action agreement has been executed. However, the violator shall may be liable for any fines that accrued before the voluntary corrective action agreement was executed.
- 4. Failure to complete the corrective action by the completion date shall constitute an additional violation and shall be handled in accordance with this section, except that no further notice need be given before enforcement proceedings are initiated. The County may proceed on the violation pertaining to failure to comply with the voluntary corrective action and/or the original land use violation. Monetary fines shall be imposed from either the date of the initial violation or the day following the failure to comply with the voluntary corrective action and shall continue to accrue thereafter as set forth in this Section.

F. Abatement by County

- 1. Failing to correct a violation constitutes a Class B misdemeanor. Upon conviction of the violating party, a court may authorize the County to enter upon the subject property and remove, correct, or abate the condition that is subject to the violation. The County shall provide the court an itemized statement of all expenses incurred in the abatement reduced for and request payment within 60 days as restitution. The court may authorize seizure of personal property as restitution.
- 2. Whenever a land use violation constitutes an immediate and emergent threat to the public health, safety, or welfare or to the environment, the County, when feasible and allowed by law, may summarily and without prior notice correct or abate the condition. Notice of such abatement, including the reason for it, shall be

given to the violator as soon as reasonably possible after the correction or abatement.

3. During an abatement proceeding, any personal property constituting a LUDMO violation may be confiscated as part of the abatement process. Any personal property that has been confiscated will be held pending order of restitution. The owner may recover the property upon showing that the LUDMO violation has been corrected or that substantial efforts, as determined by the enforcement officer, have been made to correct the land use violation; provided, however, that the property owner pay the cost of storage of the personal property. If, after 90 days of the property being confiscated, the property owner fails to claim the confiscated property, and after the County complies with the requirements of Utah Code, as currently amended, the County may dispose of the property, including sale at auction, disposal, etc., and seek to collect the cost of storage from the property owner. The County may also pursue any other remedy as allowed by law.
4. Any and all costs incurred by the County in the abatement of a land use violation under the provisions of this LUDMO or other county ordinance shall constitute a lien against the property upon which such land use violation existed, which lien shall be filed, proven, and collected as provided for by law. Such lien shall be noticed to all persons from the time of its recording and shall bear interest at the legal rate thereafter until satisfied.

G. **Civil Enforcement** – Appropriate actions and proceedings may be taken by the County in law or in equity to prevent any violation of this LUDMO, to prevent unlawful construction, to recover damages, including the cost, if any, of correcting the land use violation, to restrain, correct, or abate a violation, and to prevent illegal occupancy of a building, structure, or premises.

Nonexclusive Remedies, Building Permits, Certificates of Occupancy and Land Use Compliance, Etc. – The County may take any or all of the actions listed in this LUDMO to abate, enjoin, or correct a land use violation, including against any person or entity that creates, causes, or allows a land use violation to exist, and to recover damages for such violation. The County may withhold, suspend, or revoke building permits, certificates of occupancy and land use compliance, and other permits and licenses to enforce this LUDMO and the conditions and terms of permits and licenses issued hereunder. The abatement of a land use violation does not prejudice the right of the County or any person to recover damages or penalties for its past existence. Notwithstanding the procedures outlined in this section, the County may also enforce this LUDMO and the conditions and terms of permits and licenses issued hereunder as provided under State law.

Section 12: EXPIRATION OF APPLICATIONS AND APPROVALS

- A. Except as provided in **Subsection (F and C)**, if an applicant has not taken any action on an application for 12 months, the application shall be deemed abandoned and denied and any vested right to proceed with the application expired.
- B. Building Permits
1. A building permit shall expire if:
 - a) Construction requiring inspection is not begun within 180 days from the date the building permit was issued; or
 - b) If work authorized by such permit is suspended or abandoned for a period of 180 days after the commencement.
 2. The Building Inspector may grant, in writing, one or more extensions of time, for periods of not more than 180 days each. The extension shall be requested in writing and justifiable cause demonstrated.
 3. Regardless of the number of extensions granted, a building permit shall expire if construction is not completed, and a certificate of occupancy and land use compliance is not obtained, within five years from the date the building permit was issued. The San Juan County Planning & Building Department may, upon written request and for good cause shown, extend the time to complete construction and obtain a certificate of occupancy and land use compliance for a period of time not to exceed one additional year. Such extensions shall be in writing and shall state the date the extension expires.
- C. Except as provided in **Subsection (F)**, approval of developments shall expire if application for preliminary or phased preliminary plan application has not been submitted for decision and diligently advanced by the applicant within five years from the date of receiving master plan, physical constraints, density determination, and/or concept plan approval. Projects that have already been approved prior to the effective date of this LUDMO shall have six months to file a preliminary application or a phased preliminary plan application and advance applications and approvals as required to avoid the expiration of the approvals.
1. Phased preliminary applications must be advanced within the timelines of the phased preliminary plan approval, which shall not be for more than five years between each preliminary application, and cumulatively? may not be for more than 20 years from the preliminary plan approval, or the approvals will expire.
 2. Projects that have had Master Plan, Physical Constraints, and Density Determinations granted, have maintained these approvals, and so long as they have entered into an agreement with a Special Service District to reserve water, have paid all fees to maintain the water reservation, and the water reservation remains in effect through the Special Service District, that project shall have six months to file a preliminary application or a phased preliminary application, and advance applications and approvals as required to avoid the expiration of the

approvals. The burden shall be on the applicant to prove they qualify for this exception as part of their application for Preliminary Application.

- D. Except as provided in Subsection (F), preliminary approvals of developments shall expire if an application for final approval has not been submitted for decision within one year from the date of receiving preliminary approval.
- E. Except as provided in Subsection (F), final approval of a subdivision development shall expire if the plat is not recorded within one year from the date of receipt of final approval by the Planning Commission.
- F. Upon written request of an applicant, permittee, or licensee, the expiration date of an application or approval, as the case may be, may be extended for 90 days, provided that:
 - 1. An application for an extension of time is submitted prior to the expiration date; and
 - 2. The Planning Commission or its designee finds, based on substantial evidence placed in the record:
 - a) Substantial progress is being made toward obtaining approval of the application, or in the exercise of the development rights authorized by an approval, as the case may be;
 - b) In the case of an application, no changes to this LUDMO have occurred or are being considered that may affect the application; and
 - c) In the case of an issued permit, license, or other approval, any conditions or terms of the permit, license, or other approval are still viable based on currently applicable requirements of this LUDMO.
 - 3. In no case shall an extension be granted for more than 12 months from the original expiration date.
- G. Unless otherwise provided or noted thereon, final subdivision plats, once recorded, do not expire except as provided in CLUDMA.

Section 13: PAYMENT OF FEES

Any application shall not be considered complete until the applicant has submitted a complete application, including payment of all fees as required by this LUDMO. Unless otherwise provided, fees are nonrefundable. Payment of the appropriate fee is no guarantee that an application will be approved.

Section 14: SEVERABILITY

Should any section, paragraph, sentence, clause, or phrase of this LUDMO be declared unconstitutional or invalid for any reason, the remainder of this LUDMO shall not, to the extent possible, be affected thereby.

Section 15: CONFLICTING PROVISIONS

The provisions of this LUDMO are in addition to all other County ordinances (unless otherwise stated), the laws of the State of Utah, and the laws of the United States. This LUDMO shall not supersede any development or other agreements entered into by the County where private land use regulations in deeds or covenants are more restrictive than this title. Whenever a conflict exists between this LUDMO and state or federal laws, or private land use regulations in deeds or covenants, the more restrictive provision shall apply to the extent allowed by law. The more specific provisions of this LUDMO dealing with specific zones, subdivision types, and types of uses, shall prevail over general provisions.

Section 16: CODIFICATION, INCLUSION IN CODE, AND SCRIVENER'S ERRORS

It is the intent of the San Juan County legislative body that the provisions of this LUDMO are part of the San Juan County Code as adopted; and that the provisions of this LUDMO may be renumbered, re-lettered, and the organizational nomenclature changed in order to accomplish such intentions. Regardless of whether such inclusion in the San Juan County Code is accomplished, the County may renumber, re-letter the LUDMO and correct typographical and clerical errors that do not affect the LUDMO's intent without holding a public hearing by filing a corrected or recodified copy of the same with the San Juan County Clerk/Auditor's office.