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**OFFICE OF THE LAND USE APPEAL AUTHORITY  
IN AND FOR GRAND COUNTY, STATE OF UTAH**

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PEAK VIEW DEVELOPMENT, LLC,

Appellant

v.

GRAND COUNTY UTAH, GRAND  
COUNTY COMMISSION,

Respondents

**RESPONSE IN OPPOSITION TO  
ADMINISTRATIVE APPEAL**

Hearing Officer: Craig Call

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Respondents Grand County, Utah and the Grand County Commission (collectively, the “County”), by and through the County Attorney Christina R. Sloan, hereby respond to Appellant’s Administrative Appeal (the “Appeal”) and states in support the following:

**I. INTRODUCTION AND STATEMENT OF FACTS**

The Grand County Commission (the “Commission”), a Utah political subdivision, is an expanded commission form of government under Utah Statute § 17-52a-202. Accordingly, the Commission serves as both the county executive and the county legislative body. *Id. at 202(3); see also Grand County Ordinance No. 614* (Optional Plan),

<https://www.grandcountyutah.net/DocumentCenter/View/9972/Ordinance-615---Amendments-to-the-Land-Use-Code---9-2020>.

On March 2, 2021, in adopting the Grand County Rules and Regulations for High Density Housing Overlay Developments (the “Rules and Regulations”), the Commission acted within its administrative capacity as the County executive to implement a law already in existence, Grand County Ordinance No. 591 (“HDHO Ordinance”), codified in Section 4.7 of the Grand County Land Use Code (“LUC”). *See County Exhibit A* (Rules and Regulations); *County Exhibit B* (LUC Section 4.7); *see also Suarez v. Grand Cty*, 2012 UT 72, ¶ 19, 296 P.3d 688, 694, quoting *Carter v. Lehi City*, 2012 UT 2, ¶ 32, 269 P.3d 141 (administrative acts are aimed at applying an existing law to particular individuals or groups).

Further, the Commission adopted the Rules and Regulations by vote alone; no formal resolution or ordinance citing policy considerations accompanied their adoption. *Suarez*, ¶ 19 (legislative acts are formal in nature). In fact, the County Attorney explained to the Commission prior to its vote that it need not adopt the Rules and Regulations at all, which document she drafted at the request of Developers of High Density Housing Overlay (“HDHO”) Developments to answer questions regarding the County’s administration of the HDHO Ordinance.

Ultimately, the Commission adopted the Rules and Regulations by unanimous vote at a public meeting to build confidence in the HDHO program for local buyers, to help guide the administrator of the Program, the Housing Authority of Southeastern Utah (“Housing Authority” or “HASU”), and upon the recommendation of the Grand County Planning Commission. Specifically, the Rules and Regulations address temporary leaves of absences or lapses in local employment; the treatment of familial financial partners and non-profit organizations;

notification requirements; and procedures and timelines related to applications, renewals, unit/lot sales, appeal, and enforcement under LUC Section 4.7. *See County Exhibit A.*

Now, the Appellant (“Developer”), rich in density after County approval of its zoning map amendment and with much money to gain, seeks to invalidate the Rules and Regulations in an attempt to undermine the effectiveness of the HDHO Ordinance, the County’s award-winning workforce housing legislation. The Commission adopted the HDHO Ordinance on January 15, 2019 after more than eighteen months of public hearings, meetings, and comment and study of data and market research, all of which concluded that the County needed more housing for local workers that serve the tourism industry.<sup>1</sup>

Over a period of years predating the HDHO drafting process, County staff and elected officials had considered a number of legislative strategies for incentivizing workforce housing. Most affordable housing programs in comparable Western tourism economies, such as Aspen, Vail, and Jackson Hole, require sales price caps and income qualifications which are effective but administratively costly to the local government to implement and enforce. Accordingly, the Commission zeroed in on a simpler, progressive model - one that relied on a local ownership requirement to repress prices to levels supported by local wages. Price caps and income qualifications were unnecessary because, by deed restricting the ownership and rentals of the HDHO units and lots for the County’s essential workforce only, home prices would deflate to

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<sup>1</sup> One such study relied upon repeatedly by County staff in HDHO public hearings and meetings throughout 2018 was the BAE Urban Economics Phase I Assured Housing Feasibility Study for the City of Moab and Grand County, Utah (“BAE Housing Study”) which determined that in 2017 no homes sold were affordable to households earning up to 80% of Area Median Income (“AMI”) and only 7 homes sold were affordable to households earning up to 100% of AMI. *See BAE Housing Study*, page X, <https://www.grandcountyutah.net/DocumentCenter/View/5135/Phase-1---Economic-Feasibility-Report---Moab-Area-Assured-Housing-3-2-18?bidId=>.

what locals could afford.<sup>2</sup> At public meetings throughout 2018, County staff in the Planning and Zoning Department assured the Commission repeatedly that since the ownership qualification happens early at sale, because the enforcement provision set forth in Section 4.7.11 of the HDHO Ordinance was express and strict, and due to the fact that the Housing Authority was willing to administer the program for the County, the HDHO Ordinance provided an effective and efficient solution to at least one aspect of the County's housing crisis.<sup>3</sup>

Accordingly, the Commission approved the HDHO Ordinance on January 15, 2019 and amended the same on June 18, 2019 to expand the definition of "actively employed household" to include "a retiree with a work history required under subsections A.1 through 3 of this section for the five years prior to retirement." *See County Exhibit B* at Section 4.7.3.A(5). The HDHO Ordinance creates an overlay whereby a developer can request increased density via a zoning

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<sup>2</sup> For example, this conversation at the June 5, 2018 Commission meeting was representative of many held while the Commission workshopped the HDHO Ordinance throughout 2018:

Commissioner Hawks: Will the HDHO Ordinance will put a cap on "how much [developers] can charge for [HDHO lots/units]?"

PZ Staff: "It does not. We are counting on the income level of people who live here to create the cap. Theoretically, if they were required to sell to people who live here full-time, then they would have to make it affordable to people who live here full-time or they wouldn't be able to sell the units."

Commissioner Wells: "How confident are you that . . . the economic viability is still intact for development in those areas. It just seems, back of the napkin, that's a lot of units."

PZ Staff: "All of the units will be developed to market rate. So ultimately it's up to the developer or realtor to sell those units. We totally removed the affordability aspect of this and said: as long as you aren't selling to second homeowners."

Commissioner Wells: "You aren't going to cap the value of the unit with a deed restriction?"

PZ Staff: "No, the market will kinda do what it does."

Commissioner Wells: "So you are deed restricting it for certain criteria."

PZ Staff: "Right."

<sup>3</sup> "Because the units built through the HDHO would not be restricted based on income, they would be restricted based on the owner or renter living and working in Grand County, there is not a proposed cap on appreciation or price . . . When that house turns over after the first owner or renter, they are still required to sell or rent to someone who lives and works in Grand County. So that market restriction on what price they can generate as a sale or in rent is going to be dictated by what wages are here in Grand County. In effect, you are achieving affordability in the same way you were with the first buyer. So, yes, it could appreciate but only if, say, wages are going up or there are more people living in Grand County earning wages that enable them to pay that price point." PZ Staff, October 16, 2018 Commission Workshop.

map amendment, a legislative decision, in the County in exchange for deed restricting eighty percent (80%) of the lots or units within the development for local workforce ownership and housing under the terms of LUC Section 4.7. *Id.* at Section 4.7.8.

From June 2019 through March 2021, the County rezoned eight properties with HDHO districts, which resulted in approval of 278 HDHO lots or units. However, only 3 projects with a total of 19 HDHO lots or units have proceeded to the next stage of the land use process: final plat.

As stated in the Appeal, on November 6, 2019, the County approved the Developer's rezone request, Master Plan, and Development Agreement which rezoned the property known as the Peak View Subdivision from rural residential (1 lot/unit per acre) to HDHO District 25 (25 lots/units per acre). *See Developer Exhibit A; County Exhibit B at Section 4.7.4.A (HDHO 25); County Exhibit C (LUC Section 5.4.1.A (rural residential))*. Thus, in so rezoning this property, the Commission agreed to increase the density by 25 times in exchange for home ownership for the local workforce and strict adherence to LUC Section 4.7, including the prohibition against selling lots or units to non-qualified households in LUC Section 4.7.11.

On August 4, 2020, the Commission approved Developer's Phase I final plat for the project, which Developer continued to market at that time as a project for locals by locals. On December 17, 2020, Developer obtained its first building permit for the project. On March 2, 2021, the County adopted the Rules and Regulations. And on March 30, 2021, Developer filed its Appeal of the same.

## ARGUMENT

### **I. THE RULES AND REGULATIONS ARE CONSISTENT WITH THE LAND USE CODE AND HDHO ORDINANCE**

Developer's argument that the Rules and Regulations are inconsistent, and therefore improperly amend the HDHO Ordinance, is meritless. Specifically, Developer argues that the Rules and Regulations create new ownership and oversight requirements inconsistent with the LUC. However, this argument fails because, when read as a whole, the HDHO Ordinance requires ownership of the HDHO units and lots by actively employed households; contains a clear prohibition on selling or renting properties to non-actively employed households; and includes an enforcement provision for violations of the HDHO Ordinance.

Under Utah law, “[courts] read the plain language of the statute as a whole, and interpret its provisions in harmony with other statutes in the same chapter and related chapters.” *Bryner v. Cardon Outreach, LLC*, 2018 UT 52, ¶ 10, 428 P.3d 1096 (quoting *State v. Barrett*, 2005 UT 88, ¶ 29, 127 P.3d 682). Statutory ambiguity exists if there are multiple reasonable interpretations. *Id.* However, “a statute susceptible to competing interpretations may nevertheless be unambiguous if the text of the act as a whole, in light of related statutory provisions, makes all but one of those meanings implausible.” *Id.* (quoting *Utah Pub. Emps. Ass’n v. State*, 2006 UT 9, ¶ 60, 131 P.3d 208 (Parrish, J., concurring)).

Here, when read as a whole, the HDHO Ordinance clearly intends to limit ownership to “actively employed households.” *See County Exhibit B* at Section 4.7.3.A; *see also id.* at Section 4.7.3.M (referencing owner or renter rather than occupant) and 4.7.4.A (referencing owner or renter rather than occupant). Indeed, the HDHO Ordinance itself indisputably prohibits the sale or rental of an HDHO lot to a household not qualified under the HDHO Ordinance. *See id.* at

Section 4.7.11.

Therefore, the Rules and Regulations' restated ownership requirement does not exceed the HDHO Ordinance's scope. Developer attempts to ignore the express language of the HDHO Ordinance - and specifically its prohibition against selling HDHO units or lots to non-qualified households - to circumvent the HDHO's intended purpose, which is to prevent non-local investors from purchasing HDHO properties at prices above those supported by local wages and driving up rents beyond what local county residents can afford. For this reason, Developer's preferred interpretation of the HDHO Ordinance, and its attempts to invalidate the Rules and Regulations, for its own gain cannot be permitted.

Similarly, Developer's argument that the HDHO Ordinance's enforcement provision cannot guide statutory interpretation because it violates Utah Code Ann. § 17-53-223(2)(b), which prohibits a county from "impos[ing] a criminal penalty greater than an infraction for a violation pertaining to an individual's pet, . . . or an individual's use of the individual's residence"<sup>4</sup> except in certain limited circumstances, is similarly meritless. Even assuming that sale of the property constitutes an "individual's use of the individual's residence," which the County disputes,<sup>5</sup> *Allgood v. Larson*, 545 P.2d 530, 532 (Utah 1976) establishes that "[i]f the ordinance *penalty* conflicts with that of the general law of the state covering the same subject,

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<sup>4</sup> This specific section became effective May 12, 2020, after the HDHO Ordinance was passed in 2019.

<sup>5</sup> Indeed, the only support Developer cites for the proposition that the word "use" in Section 17-53-223(2)(b) is intended to include sale of an individual's property is a misquoted citation from *Anderson v. Provo City Corp.*, 2005 UT 5, ¶ 26, 108 P.3d 701, 709, which actually reads "'an owner's *economic* choices boil down to occupying, renting or selling' a residence." (quoting *Gangemi v. Zoning Bd. of Appeals*, 255 Conn. 143, 763 A.2d 1011, 1016 n. 13 (2001) (emphasis in original)).

the ordinance *penalty* is void. The . . . ordinance *penalty* cannot exceed that of the state law.” (emphasis added). Therefore, at best, the *penalty* established in LUC Section 4.7.11 is void—not the HDHO Ordinance itself or the prohibition on the sale of an HDHO lot to a non-actively employed household. And more importantly, the form of penalty imposed does not change the fact that the HDHO Ordinance intended to limit ownership to actively employed households for the reasons discussed above. Therefore, the Rules and Regulations merely restate the HDHO’s ownership requirement and should not be invalidated.

Additionally, Developer argues that the Rules and Regulations create oversight requirements beyond the HDHO Ordinance’s scope. However, Developer acknowledges that the HDHO Ordinance permits the County enforcement authority to “penalize violators of the statute” and “institute legal actions or proceedings to ensure compliance[.]” *See Appeal* at p7. Absent some type of oversight authority, Developer would have no incentive to comply with the HDHO Ordinance’s restrictions on sales to actively employed households.

Moreover, the Rules and Regulations do not give HASU greater authority to approve and/or deny HDHO lot sales or rentals beyond the HDHO Ordinance’s conditions for ownership or rental, meaning that as long as the intended purchaser or renter meets the qualification of “actively employed household,” HASU will approve moving forward with the purchase contract or lease. Again, Developer’s attempt to invalidate the Rules and Regulations’ pre-approval process would only encourage and result in repeated violations of the HDHO Ordinance’s ownership limitations, especially if an infraction is the highest penalty the County can impose for a single violation. Such oversight requirements constitute a reasonable and legitimate means of ensuring compliance with the HDHO Ordinance, and therefore, should not be invalidated.



## **II. THE RULES AND REGULATIONS DO NOT VIOLATE THE VESTED RIGHTS DOCTRINE**

Contrary to Developer's assertions, the Rules and Regulations do not violate the vested rights doctrine. "The vested rights doctrine is the body of law that addresses at what point development rights 'vest' such that subsequent zoning changes cannot be retroactively applied." *Keith v. Mountain Resorts Dev., L.L.C.*, 2014 UT 32, ¶ 30, 337 P.3d 213. "Until the rights vest on a particular piece of property, the [county] can change land-use and zoning regulations and apply the new laws to the development of the property." *Id.* Under Utah law, "rights in a development application vest upon submission of a completed application that conforms to the county land use and zoning ordinances in effect at the time." *Id.* at ¶ 31. However, submission of a development plan merely creates the "right not to have the county revoke approval of the development based on a change in the applicable zoning laws." *Id.* Thus, "[a] development approval does not create independent free-floating vested property rights—the rights obtained by the submission and later approval of a development plan are necessarily conditioned upon compliance with the approved plan." *Id.*

As previously discussed, the HDHO Ordinance encompasses both an ownership requirement and enforcement authority. Developer had actual notice of the HDHO Ordinance's prohibition on sales to non-actively employed households and its enforcement authority, via the express language of LUC Section 4.7, when it entered into the Development Agreement. *See e.g. County Exhibit B* at Section 4.7.11

In addition, the Developer had constructive notice of the requirements of the HDHO Ordinance as the ownership requirement and HASU's program administration were discussed numerous times in public meetings, workshops, and hearings before local residents for more than

18 months. Developer is a Utah company owned by Grand County residents, and local developers often attended and participated in these public meetings during the HDHO drafting and adoption process. In addition, the intent and requirements of the HDHO Ordinance were also reported on by local media such as the *Moab Sun News*, a free weekly newspaper:

“This is really more of a ‘workforce housing’ incentive than an ‘affordable housing’ incentive,” said Zacharia Levine, director of the County Department of Community and Economic Development.

Home prices in Moab are high in part due to second-home buyers and overnight rental developers willing to spend more capital than the average Grand County earner can afford.

“We anticipate these units to be more affordable than unrestricted market-rate units. Buyers and renters of restricted HDHO lots or units will not have to compete with the spending power of non-residents,” said Levine, meaning that, at least in theory, the selling prices of those units will be limited by the incomes of Grand County residents.

There is not, however, Levine noted, an explicit income-based component to the deed restriction required in the HDHO . . . “While we suspect the restricted HDHO units will be cheaper than unrestricted market-rate units, due to the elimination of competition with second homeowners and non-residents and overnight lodging units, we don’t know for certain if, or how much, cheaper they will be,” Levine noted.

See Rachel Fixen, *Closing the Gap: New Developments May Aid Median-Income Homebuyers* (Feb. 6, 2020),

[https://www.moabsunnews.com/news/article\\_1b8bf8a4-494f-11ea-a65b-d3f66d1b7a99.html](https://www.moabsunnews.com/news/article_1b8bf8a4-494f-11ea-a65b-d3f66d1b7a99.html).

Developer has no “vested right” to circumvent the County’s objectives in passing the HDHO Ordinance or the express language of the HDHO Ordinance itself, restated in the Rules and Regulations. Therefore, Developer’s arguments that the Rules and Regulations violate the vested rights doctrine are meritless.

### **III. THE RULES AND REGULATIONS ARE NOT AN IMPERMISSIBLE DIRECT OR INDIRECT RESTRAINT ON ALIENATION**

Developer next argues that the Rules and Regulations contain impermissible direct and indirect restraints on alienation. Under Utah law, direct restraints on alienation “involve restraints contained in property conveyances or contracts.” *Anderson v. Provo City Corp.*, 2005 UT 5, ¶ 26, 108 P.3d 701 (citing *Redd v. W. Sav. & Loan Co.*, 646 P.2d 761, 763 (Utah 1982)). Utah law recognizes that “any provision of an instrument of conveyance or of any later instrument which purports to prohibit or restrain the conveyee or owner in fee from alienating the property or to withhold from him the right or power to alienate, whether for the entire period of his life or for some lesser time, is void.” *Page v. Page*, 15 Utah 2d 432, 434, 394 P.2d 612, 613 (1964). In *Page*, a settlement agreement between a widow and the decedent’s parents contained a clause that the widow would not sell or mortgage the real property without the consent of the decedent’s parents. *Id.* at 433. The Utah Supreme Court held that requiring the decedent’s parents’ consent to sell or mortgage the property constituted an unreasonable restraint on alienation and was void as against public policy. *Id.* at 433-35.

Here, the Rules and Regulations’ ownership and oversight requirements are not classical direct restraints on alienation similar to those in *Page*. See *Anderson*, 2005 UT 5, ¶ 26 (ordinance amendment restricting accessory apartment rental was not a direct restraint on alienation). Instead, “an indirect restraint on alienation arises when an attempt is made to accomplish some purpose other than the restraint of alienability, but with the incidental result that the instrument, if valid, would restrain practical alienability.” *Anderson*, 2005 UT 5, ¶ 26. “[C]ourts generally have upheld and enforced this non-classical type if it is found reasonably necessary to protect a justifiable or legitimate interest of the parties.” *Redd*, 646 P.2d at 764.

In *Anderson*, the Utah Supreme Court considered whether an ordinance that permitted “only homeowners who reside in their homes to rent out ‘accessory’ apartments[,]” constituted an invalid restraint on alienation because it “will make it more difficult for owners of these properties to find willing purchasers.” *Id.* at ¶¶ 1, 26. The Court emphasized that, unlike cases where ordinances totally prohibited renting, the affected homeowners in this case retained the right to rent their primary residence; thus, even if the ordinance’s rental restriction constituted an indirect restraint on alienability, the ordinance was “reasonably necessary to protect Provo City’s justifiable and legitimate interest in preserving the single-family residential character of the affected neighborhoods.” *Id.* at ¶ 27.

Similar to *Anderson*, the HDHO Ordinance’s ownership and oversight requirements, as restated in the Rules and Regulations, do not create an absolute restriction on the sale or rental of HDHO units or lots, but instead serve the justifiable and legitimate interest in stabilizing housing prices and rents for the County’s workforce. Therefore, the Rules and Regulations do not create an unreasonable restraint on alienation.

Developer argues that the Rules and Regulations are an indirect restraint on alienation because they prohibit a lender from taking title to a property subject to state law governing foreclosures, therefore making the properties unforeclosable and, in essence, unfinanceable. However, the Rules and Regulations do not contain direct or indirect restrictions on lenders’ ability to foreclose on HDHO units or lots and are not even recorded against HDHO properties. And even if the Rules and Regulations could be interpreted as affecting lenders’ rights to foreclose on HDHO units or lots, governing state law would certainly preempt this interpretation. As Developer correctly notes, the foreclosure process is a “statutorily mandated process to take

possession and auction off the property.” Appeal at p14. Thus, the County has no authority to curtail a lender’s rights to foreclose pursuant to state law, and any such attempt would be preempted by state law. Developer’s arguments to the contrary are simply untenable.

Even absent a preemption issue, the County simply has no incentive to interpret its ordinances and rules to prohibit or impede lenders from foreclosing on HDHO lots or units. The County’s purpose in passing the HDHO Ordinance and, subsequently approving the Rules and Regulations, was to create affordable housing options for the County’s local workforce and prevent outside investors from driving up home prices. These County residents depend on financing to purchase these properties, and lenders must have recourse in the event of a default. Interpreting its ordinances and rules to prohibit or interfere with a lender’s foreclosure rights would directly contradict the County’s stated objectives by making financing unobtainable.

For these reasons, Developer’s arguments are meritless, and the Rules and Regulations do not create an unreasonable restraint on alienation.

#### **IV. THE RULES AND REGULATIONS DO NOT CONSTITUTE A MODIFICATION TO THE DEVELOPMENT AGREEMENT AND THEREFORE DO NOT BREACH THE DEVELOPMENT AGREEMENT**

Developer claims that the County breached the Development Agreement by materially amending it without Developer’s consent in adopting the Rules and Regulations. Developer relies on *Tooele Associates Ltd Partnership v. Tooele City*, 2012 UT App 214, 284 P.3d 709, in support of its position; however, such reliance is misguided. In *Tooele Associates*, the developer claimed that the city breached a series of agreements the parties entered into for development of a planned residential community. *Id.* ¶ 2. The agreements required the developer to construct certain public improvements and required the city to provide culinary water for the project. *Id.*

However, the developer claimed that the city breached these agreements by misapplying the city's "public improvements ordinances with respect to the [planned residential community], requiring the public improvements to meet standards not clearly set forth in any agreement and not required of other similarly situated developers, creating arbitrary and incomplete punch lists of items that needed to be fixed for the public improvements to be considered complete, slowing or refusing to make final inspections of the public improvements, refusing to recognize prior admissions that certain public improvements were complete, and ultimately refusing to accept certain public improvements as complete." *Id.* ¶ 4. The Court of Appeals affirmed the jury verdict in favor of the developer, holding that the city materially breached the agreements, including its covenant of good faith and fair dealing, in part by hindering the developer's "completing of the public improvements and withholding approval of additional phases." *Id.* ¶ 34, 35.

In contrast to *Tooele Associates*, the County has not hindered or interfered with Developer's completion of the Peak View Subdivision. Indeed, Developer admits the HDHO Ordinance is incorporated into the Development Agreement by its express terms. *See Appeal* at 16; *Developer Exhibit A*. And Developer does not dispute the HDHO Ordinance includes the prohibition from "sell[ing] or rent[ing] an HDHO lot or unit to a household not qualified under this section." LUC Section 4.7.11.

For these reasons and those discussed above, Developer was aware of the ownership restrictions at the time of signing the Development Agreement, which requirements are expressly integrated throughout the Development Agreement by reference to LUC Section 4.7. In addition, despite Developer's arguments to the contrary, the Rules and Regulations have not

interfered with Developer's ability to complete the project and have not caused it damages. Developer is permitted to hold and rent HDHO units and lots or sell them to other local investors, and the HDHO units and lots are financeable.

## **V. CONCLUSION**

The Rules and Regulations are guidelines to help the County and its designee, HASU, implement the HDHO Ordinance, a critical workforce housing legislation. The Rules and Regulations do not: 1) amend LUC Section 4.7, which already prohibits sales of HDHO units and lots to non-qualified households; 2) violate or change any of Developer's vested rights, which are rooted in LUC Section 4.7, which already prohibits sales of HDHO units and lots to non-qualified households; 3) constitute an unreasonable restraint on alienation because the County's objective of providing affordable housing to the County's local workforce is legally justifiable and legitimate; or 4) breach the Development Agreement which already integrates LUC Section 4.7, which already prohibits sales of HDHO units and lots to non-qualified households.

DATED this 26th day of April 2021.

**GRAND COUNTY**

*/s/ CHRISTINA R. SLOAN*

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Christina R. Sloan  
Grand County Attorney

**GRAND COUNTY**  
**RULES and REGULATIONS**  
**for**  
**HIGH DENSITY HOUSING OVERLAY DEVELOPMENTS**  
*Effective March 2, 2021*

**WHEREAS**, the legislative body of Grand County has approved the application of the High Density Housing Overlay (“HDHO”) to those HDHO developments approved pursuant to Grand County Ordinance No. 591 (2019) as codified in the Grand County Land Use Code (“LUC”) in Section 4.7;

**WHEREAS**, Grand County created the HDHO to provide decent, safe and affordable housing in Grand County, Utah for local residents contributing to the workforce;

**WHEREAS**, as a condition of approval and subject to LUC Section 4.7.6(B), the Lots and Units particularly described in the attached *Exhibit A* are deed restricted for Primary Residential Housing for Actively Employed Households in perpetuity;

**WHEREAS**, Grand County has delegated management of the HDHO program to the Housing Authority of Southeastern Utah (“HASU”), a non-profit organization incorporated in 1994 to administer affordable housing programs for Grand County and San Juan County (as used herein, Grand County shall include its designee, HASU).

**SECTION 1. PURPOSE**

A. Rules and Regulations. These Rules and Regulations shall provide instructions and guidance to the County and HASU when applying the provisions of LUC Section 4.7 to HDHO Developments. All terms not defined herein shall have the meaning assigned them in LUC Section 4.7.

B. Qualified Ownership Required. LUC Section 4.7, and specifically 4.7.11, requires all HDHO Lots and Units to be sold to Households who qualify thereunder. Temporary lapses in local employment or leaves of absence shall be addressed pursuant to the provisions in Section 3 below.

C. Purpose. Subject to LUC Section 4.7 and these Rules and Regulations, the purpose of the HDHO is to facilitate housing for local residents working in Grand County who maintain their primary residence in Grand County. These Rules and Regulations shall be applied to HDHO Developments in a manner which supports this purpose.

**SECTION 2. QUALIFIED HOUSEHOLD**



A. Qualified Household. The ownership, use, and occupancy of HDHO Lots and Units shall be limited to qualified Actively Employed Households (hereafter "Qualified Household"), as set forth in LUC Section 4.7 and herein.

1. *Household, defined.*

i. The definition of Actively Employed Households shall not be construed to prohibit a familial financial partner who co-signs a loan with an adult who meets the criteria set forth in LUC Section 4.7.3.

ii. So long as the owner of a business or entity with a primary place of business in Grand County is approved as a Qualified Household, pursuant to LUC Section 4.7.3(A)(2), either the owner or the business or entity may own the HDHO Lot or Unit.

iii. The definition of "owner's representative" in LUC Section 4.7.3(A)(2) shall be construed to include Directors of a non-profit organization. Accordingly, so long as a majority of the Directors of a non-profit organization with a primary place of business in Grand County is approved as a Qualified Household, pursuant to LUC Section 4.7.3(A)(2), the non-profit organization may own the HDHO Lot or Unit.

2. *Continuing Obligation*. Once an Owner is approved as a Qualified Household, as required by LUC Section 4.7.11, the occupants of the HDHO Lot or Unit shall satisfy the definition of a Qualified Household at all times as required by LUC Section 4.7 and these Rules and Regulations.

3. *Duty of Notification*. Each Owner and renter shall notify the County prior to any change in ownership and occupancy of their HDHO Lot or Unit, which change shall be pre-approved by the County pursuant to Section 3 herein. Any failure to pre-qualify a new owner or occupant shall be the sole liability of the owner or renter.

4. *Ownership by Grand County*. Grand County may purchase and own the HDHO Lot and/or Unit.

### **SECTION 3. APPLICATION PROCEDURE**

A. Application Required. Each Owner and renter of an HDHO Lot or Unit shall apply for approval as a Qualified Household on written applications, kept on file with HASU, at least thirty (30) days prior to purchase or lease of an HDHO Lot or Unit.

B. Application Approval. Once HASU determines eligibility, it shall provide written acknowledgement of the same.

C. Notifications Required. Each Owner and renter shall notify HASU prior to any change in ownership or occupancy of their HDHO Lot or Unit or their employment status, which change shall be pre-approved by HASU.

1. *Lapses of Employment.*

i. Temporary lapses of employment of three (3) months or less do not require notification to HASU and shall not affect an owner or renter's status as a Qualified Household.

ii. Lapses of employment lasting more than three (3) months shall be reported to HASU by the owner or renter and require HASU approval to ensure continuing eligibility of the occupant.

2. *Leaves of Absence.*

i. Temporary leaves of absence of three (3) months or less do not require notification to HASU and shall not affect an owner or renter's status as a Qualified Household.

ii. Extraordinary leaves of absence for specialized education, care-giving of a family member, religious or charitable work, or military service, lasting not more than two (2) years, where the owner or renter can demonstrate a commitment to returning to Grand County and otherwise complying with LUC Section 4.7.3(M), may be granted by HASU in advance. In the event of approval, the owner may rent the HDHO Lot or Unit to a Qualified Household during the extraordinary leave of absence.

D. Renewal. HASU will contact each owner and renter on an annual basis to re-qualify the Household. Each owner and renter shall submit a written affidavit that attests to their qualifications and any additional requested documentation required by HASU that proves the same.

E. Denials or Revocation. HASU may deny an Application or revoke a prior determination of eligibility if the occupant does not continue to qualify as a Qualified Householder under LUC Section 4.7.3 and these Rules and Regulations. If HASU denies or revokes an Application or prior determination of eligibility, that determination shall be referred to the Grand County Planning and Zoning Director for Final Decision.

F. Change in Eligibility. Once an Owner is approved as a Qualified Household, a change in the owner's eligibility status shall not constitute a violation hereunder for the period of time the owner continues to own the HDHO Lot or Unit so long as the occupant continues to qualify as a Qualified Household.

## **SECTION 4. SALE OF UNITS**

A. Sale of Units, generally. An owner may sell an HDHO Lot or Unit For Sale By Owner or with a licensed Utah realtor. If an HDHO Lot or Unit is occupied during the Listing Period, the occupant must be a Qualified Household.

B. Notification upon Listing. The owner shall notify the County when an HDHO Lot or Unit is listed for sale, when it goes under contract, and when it sells for the purposes of qualifying the potential or new owner.

C. Prequalification of Owners. It is advisable for potential buyers of HDHO Lots and Units to request pre-approval as a Qualified Household pursuant to Section 3 above while a sale is pending, at least thirty (30) days and preferably sixty (60) days before closing.

## **SECTION 5. APPEAL AND ENFORCEMENT**

A. Conflict. In the event of conflict between these Rules and Regulations and LUC Section 4.7, LUC Section 4.7 shall control.

B. Appeal. A person adversely affected by a denial or revocation of the Grand County Planning and Zoning Director may appeal such Final Decision within thirty (30) days of the County's written decision pursuant to the process set forth in Chapter 1.16 of Grand County's General Ordinances.

C. Violation, Defined. Any default under LUC Section 4.7, the Deed Restrictions recorded against the HDHO Development, or these Rules and Regulations, including fraud or misrepresentation by an Owner of an HDHO Lot or Unit, shall constitute a violation of County Ordinance.

D. Investigation and Enforcement. Grand County shall oversee enforcement of LUC Section 4.7 and these Rules and Regulations. Possible violations of the same shall be investigated and enforced under Chapter 1.16 of the General Grand County Ordinances.

E. Grand County Remedies. An Owner shall cure a Violation or shall sell the HDHO Lot or Unit to a Qualified Household.

ADOPTED by the Grand County Commission on March 2, 2021 in open session of a public meeting.

**GRAND COUNTY COMMISSION**

  
Mary McGann, Chair

ATTEST:

  
Quinn Hall, Clerk/Auditor



(3) An analysis that compares the stated community benefit(s) with the proposed impact(s).

3. The conceptual site plan shall include the information required under Sections [9.17.3A](#) through N. [Ord. 607, 2020.]

**D. Recordation.** The developer or subdivider shall record the development agreement and master plan in the real property records of Grand County, Utah, prior to recordation of a final plat approved hereunder or issuance of a building permit for any unit within a site plan approved hereunder. Once approved, the development agreement and master plan may not be amended or modified without reapplication to the County.

**E. Effect.** Review and consideration of an -OAO District application is a discretionary legislative decision. Further, approval of an -OAO District application does not constitute site plan, preliminary plat, or final plat approval. Rather, such approval shall be deemed approval of permission to develop under the standards of this section and the master plan.

**F. Lapse of Approval.** The -OAO District approval shall automatically expire and be void unless the County approves and developer records a site plan or final plat for the overnight accommodations development in accordance with Section [9.5](#) or [9.17](#) within 24 months of the date of -OAO District approval.

**G. Conflict.** In the event of conflict between the provisions of Section [9.2](#) and this Section [4.6.7](#), this section shall control.

[Ord. 622, 2021; Ord. 595, 2019.]

## 4.7 High Density Housing Overlay Districts [Revised 3/21](#)

### 4.7.1 Purpose

The High Density Housing Overlay Districts ("HDHO Districts") are designed to provide for modification of the otherwise applicable development standards of the underlying base district as specified in Articles 2 and 5, in order to accomplish one or more of the following purposes:

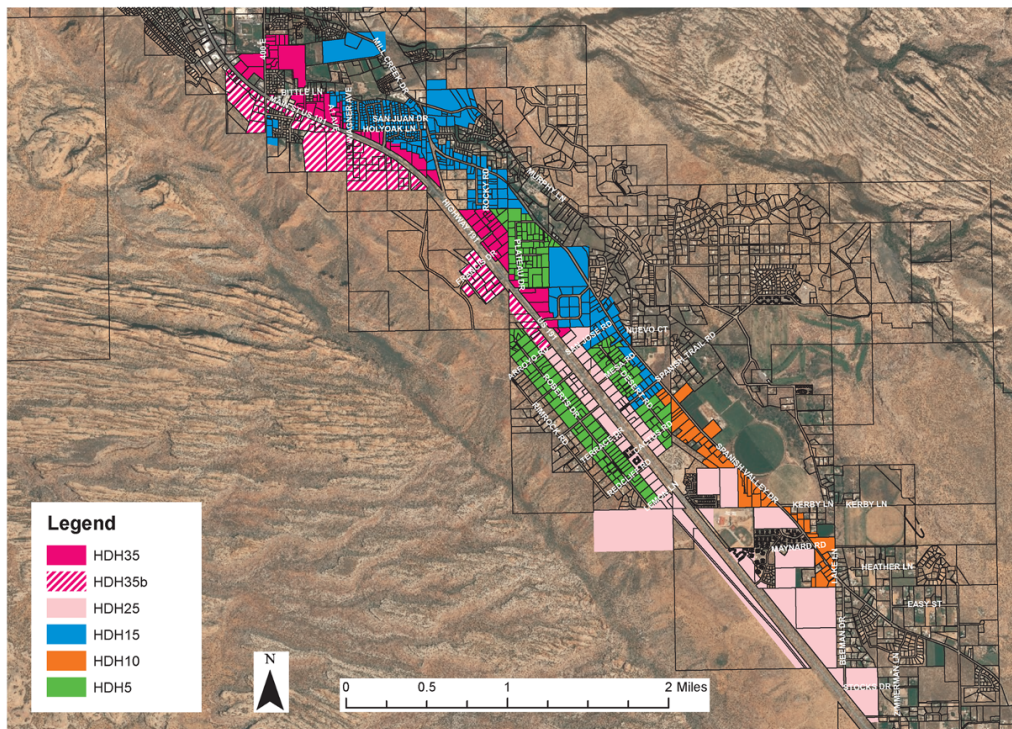
- A. Facilitating the provision of new housing units used for primary residential occupancy by actively employed households;
- B. Achieving the goals of the housing element of the County's General Plan;
- C. Implementing the policies and goals of the housing element of the County's General Plan;
- D. Encouraging the development of new high quality housing units by assisting both the public and private sector in making the provision of these units economically viable; and
- E. Encouraging the provision of primary residential housing through the combination of multiple-family and single-family residential zoning districts within the County where the residential housing projects are determined to be feasible and are consistent with the County's General Plan.

[Ord. 591, 2019.]

### 4.7.2 Applicability

The regulations set forth in this section may be applied to real property located within the HDHO boundaries, as shown in Exhibit A attached to the ordinance codified in this section, upon application to and approval by the County Commission pursuant to the provisions herein. Upon approval, the HDHO District zoning, development agreement, and master plan shall control development of the property.

High Density Housing Overlay Boundaries



[Ord. 591, 2019.]

**4.7.3 Definitions**

- A.** "Active employment household" or "actively employed household" means a household with at least one adult who meets one of the following criteria; provided, however, where there are unrelated individuals living together in one household, at least 50 percent of all the adults comprising the household shall meet one of the following criteria:
1. A full-time (aggregate of 30 hours of employment per week) employee of an entity or entities located within Grand County; or
  2. An owner or owner's representative of a business or entity with a primary place of business within Grand County; or
  3. A full-time (aggregate of 30 hours of employment per week for nine months out of each calendar year) worker who is self-employed or works out of their home must provide their entire list of clients/workload so that it can be verified that a minimum of 75 percent of their work/clients are based within Grand County;
  4. A person who is unable to work or does not have a work history required under subsections A.1 through 3 of this section due to a disability; or
  5. A retiree with a work history required under subsections A.1 through 3 of this section for the five years prior to retirement.
- B.** "Developer" means any person, firm, partnership, association, joint venture, corporation, or any entity or combination of entities, which seeks approval of an application for an HDHO development.
- C.** "Development agreement" means a development agreement and deed restriction, which is a contract between Grand County and a developer or subdivider, which is recorded as an encumbrance upon the property to ensure compliance hereunder. A development agreement shall run with the land and be binding upon the parties and their successors in title, as provided by its terms.
- D.** "High Density Housing Overlay District" or "HDHO District" means a zoning district applied to the property that benefits from a higher density than that allowed under the existing underlying zoning designation, which attendant increased density encourages the provision of new housing units used for primary residential occupancy as further described in this section.
- E.** "High Density Housing Overlay development" or "HDHO development" means a subdivision or site plan approved within an HDHO District in which at least 80 percent of the lots or units developed on the property are restricted for primary residential housing occupied by actively employed households.
- F.** "High Density Housing Overlay lot" or "HDHO lot" is a lot restricted for primary residential housing occupied by actively employed households that otherwise meet the requirements of this section.
- G.** "HDHO lots or units" or "HDHO lots and units" shall refer to HDHO lots and/or HDHO units.
- H.** "High Density Housing Overlay unit" or "HDHO unit" is a dwelling unit restricted for primary residential housing occupied by actively employed households that otherwise meet the requirements of this section.
- I.** "Household" means one adult living alone, two or more adults related to each other by blood, marriage, or another legally recognized relationship, or a maximum of five unrelated adults residing in the same residence.
- J.** "Master plan" means a planning document which guides development of the property based on the County's planning goals, existing development, and physical characteristics of the particular HDHO development. A master plan shall be recorded, run with the land, and be binding upon the parties and their successors in title, as provided by its terms.
- K.** "Primary resident" means an adult that meets the "primary residential occupancy" requirement.
- L.** "Primary residential housing" or "primary residential development" shall have the same meaning as "high density housing development," which terms may be used interchangeably throughout this section.
- M.** "Primary residential occupancy" means the owner of record occupying the dwelling unit for a minimum of nine months out of any 12-month period or a renter occupying the dwelling unit through a lease term no shorter than six months out of any 12-month period.
- N.** "Property" means a specific parcel of real property upon which an HDHO District is applied.
- O.** "Subdivider" means any person creating a subdivision and offering lots for sale to the public.

[Ord. 591, 2019.]

**4.7.4 Permitted Uses**

The following uses are permitted within an HDHO development upon the County Commission's approval of application of an HDHO District to a specific parcel:

- A.** Residential developments at a density greater than normally permitted by the underlying zoning district as described in the table below, when a subdivider or developer ensures a minimum of 80 percent of lots or units developed on the property are deed restricted for primary residential occupancy for actively employed households. HDHO lots and units may be owner-occupied or renter-occupied as long as the residents meet the occupancy and active employment requirements of this subsection A. The maximum density (units/acre) limit shall be based on a calculation that includes all existing and all new units on the land area that is being included in the calculation. Residential development qualifying for greater density pursuant to the provisions of this section shall be permitted to obtain such density by constructing residential housing types not otherwise allowed in the underlying zoning district. For example, multifamily units may be constructed in a single-family residential zone.

High Density Housing (HDH) District	Maximum Density
HDH 35a	35 lots or units per acre
HDH 35b	35 lots or units per acre
HDH 25	25 lots or units per acre

High Density Housing (HDH) District	Maximum Density
HDH 15	15 lots or units per acre
HDH 10	10 lots or units per acre
HDH 5	5 lots or units per acre

**B.** Accessory uses or structures incidental to the principally permitted use pursuant to Section [3.3](#). Any accessory dwelling unit permitted under Section [3.3](#) in an HDHO development shall meet the occupancy and active employment requirements of subsection A of this section.

[Ord. 591, 2019.]

#### 4.7.5 Development Standards

**A. Eligibility.** In order to reduce costs associated with the development and construction of primary residential housing, the property development standards set forth in subsection B of this section are established for and shall apply to all HDHO developments within the HDHO Districts upon approval of a site plan or preliminary plat approval.

**B. Property Development Standards.** The following development standards shall apply to HDHO developments within the HDHO Districts:

**1. General Design Standards.** The development shall be designed and developed in a manner compatible with and complementary to existing and potential development in the immediate vicinity of the development site. Site planning on the perimeter shall provide for protection of the property from adverse surrounding influences and shall protect surrounding areas from potentially adverse influences from the property. To the greatest extent possible, the design of the development shall promote privacy for residents and neighbors, security, and use of passive solar heating and cooling through proper placement of walls, windows, and landscaping.

**2. Minimum Design Standards.** Minimum design standards are included to ensure a high degree of quality in the development of HDHO lots and units. The following design standards shall apply to a development that utilizes the density increases allowed by this section:

a. Sidewalks shall be installed along all street frontages where otherwise required by this LUC.

**b. Screening Requirements.**

**(1) Outdoor Storage Screening.** All outdoor storage areas for materials, trash, mechanical equipment, vehicles, or other similar items shall follow the standards outlined in Section [6.4.3](#).

**(2) Parking Lot Screening.** Parking lot screening must be provided between an off-street parking area containing six or more parking spaces and either 1) a different zoning district or 2) a public street, and shall:

i. Be provided within 10 feet of the perimeter of the parking lot to be screened, except for parking lots adjacent to rain gardens/bioretenion systems, other landscape features, or where screening may negatively impact the traffic sight distance (as defined by the American Association of State Highway and Transportation Officials (AASHTO) and verified by the County Engineer);

ii. Be not less than 80 percent opaque and be a minimum of three feet in height as measured from the highest finished adjacent grade of the parking area. When shrubs are used to provide the screen, such shrubs must be at least two feet tall at planting and anticipated to grow to at least three feet tall at maturity;

iii. Not interfere with driver or pedestrian visibility for vehicles entering or exiting the premises;

iv. Utilize plants found in Section [6.4.3F](#), where required;

v. Consist of at least two of the following:

**(A)** A compact hedge of evergreen or densely twigged deciduous shrubs spaced to ensure closure into a solid hedge at maturity.

**(B)** A berm with plantings as described above.

**(C)** Transit shelters, benches, bicycle racks, and similar features may be integrated as a part of the screen.

**(D)** Fencing may be integrated as part of the screen. All wood fencing shall be stained and sealed with a weatherproof product;

vi. Be equipped with an irrigation system adequate for establishing and maintaining the plant materials within it.

**c. Parking Island Design.** Off-street parking areas with at least 25 parking stalls shall contain interior landscaped islands. Such islands shall be bounded by a raised concrete curb, pervious curbing, or an approved equivalent and shall contain mulch to retain soil moisture. This provision shall not apply to parking structures. Landscaped parking lot islands shall:

**(1)** Be located at the beginning and end of each parking row and shall contain a minimum of 180 square feet and a minimum width of nine feet;

**(2)** Include at least one tree per island;

**(3)** Incorporate shrubs, perennials, and ornamental grasses, where required;

**(4)** Be prepared with topsoil to a depth of two feet and improved to ensure adequate drainage, nutrient, and moisture retention levels for the establishment of plantings; and

**(5)** Be equipped with an irrigation system adequate for establishing and maintaining the plant materials within it.

**d. Building Exterior Facade Standards.**

(1) Exterior finishes may be of wood, masonry, stone, stucco, HDO board or other high quality material permitted by the building code, but shall not utilize vinyl siding; cedar or wood shakes; highly reflective, shiny, or mirror-like materials; or exposed plywood or particle board.

(2) Buildings shall utilize at least two of the following design features to provide visual relief along the front of the residence:

- i. Projections, recessions, or reveals such as, but not limited to, columns, pilasters, cornices, and bay windows.
- ii. Dormers.
- iii. Gables.
- iv. Recessed entries, a minimum of three feet deep.
- v. Covered front porches.
- vi. Cupolas.
- vii. Architectural pillars or posts.
- viii. Quoins.
- ix. Corbeling on wall.
- x. Decorative lintel.
- xi. Incorporation of brick or stone on at least 25 percent of front surface area.

e. Where HDHO units may be placed on the same lot as current or future temporary or short-term accommodations, dedicated HDHO units shall be clustered together so as to minimize the exposure of residents to temporary guests. In all other developments, where temporary or short-term accommodations units do not exist and cannot exist due to zoning restrictions, dedicated HDHO units shall be dispersed throughout the residential development.

f. Where there is a combination of commercial and residential uses, the commercial uses shall front along the highest road designation. Residential development shall be located behind commercial development or on upper floors above commercial development.

g. The County Commission may waive, or modify, any, or all, of these requirements when the Commission finds it is infeasible to comply due to physical or other constraints on the lot.

**3. Minimum Building Site Area and Lot Width.** There shall be no minimum building site area, minimum lot width, or maximum lot coverage requirements for individual lots or individual dwelling sites in a HDHO development. However, the building site area lot widths and lot coverage percentages shall be designated on a preliminary plat or site plan pursuant to Section [4.7.9](#).

**4. Density.** Overall density of site development within an HDHO District shall not exceed the limits established in Section [4.7.4](#).

**5. Building Height.**

a. Maximum building heights shall not exceed the limits defined in the underlying zone district except that buildings constructed in the HDHO 35b District shall not exceed four stories or 42 feet in height.

b. To the maximum extent possible, building heights and locations shall minimize shading and interruption of solar access to adjacent properties with existing residential structures or commercial agricultural operations.

c. All structures shall conform to the ridgeline standards of Section [6.9.8](#).

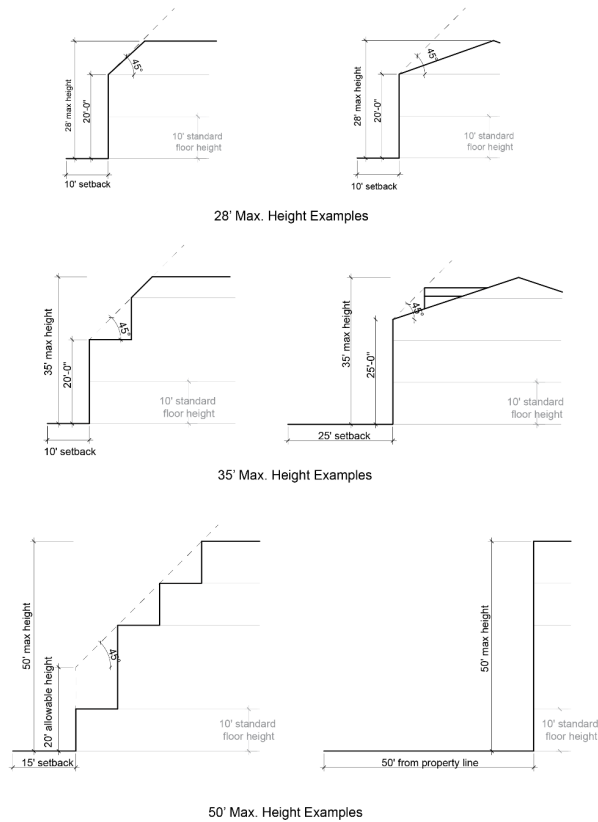
d. Structures built within an HDHO development must comply with the setback and buffer requirements of the underlying zone. The maximum height of the building at the exterior wall shall be the greater of:

- (1) Twenty feet.
- (2) The building's setback at that point.

e. From the exterior wall, the building's height may increase to its maximum height at a rate not greater than a 45 degree angle from the maximum allowable height of the exterior wall.



Examples of HDH Height-Compliant Structures



6. **Setbacks.** The minimum setbacks from the lot line of the development shall be determined by the buffer requirements of Section 5.4.1B and the compatibility standards of Section 6.10.

7. **Parking.**

a. **Number of Spaces Required.**

- (1) For every single-family or two-family dwelling, there shall be provided at least two off-street parking spaces for each unit. Parking spaces provided in a garage or carport may count towards the minimum requirement.
- (2) For every attached multifamily dwelling, off-street parking spaces shall be provided in accordance with Section 6.1.4:

Multifamily dwellings	Efficiency and one-bedroom	1.5 per dwelling unit
	Two-bedroom	1.75 per dwelling unit
	Three-bedroom and larger	2.0 per dwelling unit

b. **Parking Design Requirements.**

- (1) Parking areas for single-family or two-family dwellings need not be paved.
- (2) Parking areas for attached multifamily dwellings shall be subject to the off-street requirements outlined in Section 6.1.7.
- (3) Uncovered surface parking may be permitted in the rear and side setbacks but is not permitted in the front or street-side setback.
- (4) Garages, carports, and individual locking storage units are subject to the setback standards outlined in Section 5.4.1.
- (5) Required spaces for multifamily developments equal to or greater than five units shall be covered in a carport or a garage except that for multifamily dwellings with four or fewer units, parking spaces can be uncovered.

8. **Minimum Standards of Physical Condition.** Each HDHO unit is required to have and maintain those minimum standards of physical conditions set forth in Exhibit B – Minimum Standards, attached to the ordinance codified in this section.

9. **Streets.** All public streets within or abutting the proposed planned development shall be dedicated and improved to County specifications for the particular classification of street.

10. **Signs.** Signs shall be permitted only to the extent allowed under Section 6.5. Signs, and must be approved by the Planning and Zoning Administrator.

11. **Construction Timing.** The HDHO units shall be ready for occupancy no later than the date of the initial or temporary occupancy of any unrestricted units within the development or applicable phase thereof. If the unrestricted units are developed in phases, then the HDHO units may be developed in proportion to the phasing of the unrestricted units. For example, for each unrestricted unit constructed at least four HDHO units shall be constructed.

[Ord. 591, 2019.]

#### 4.7.6 Assurance of Primary Residential Housing and Occupancy

**A. General.** HDHO lots and units shall be used for primary residential housing for actively employed households in perpetuity.

**B. Deed Restriction.** The following deed restriction shall be integrated into the development agreement, the master plan, each final plat or site plan, and each deed of conveyance:

The Property shall be used for Primary Residential Housing for Actively Employed Households as required by Grand County Land Use Code, Section [4.7](#), High Density Overlay Districts Overlay, in perpetuity. The Property is further subject to a Development Agreement and Master Plan recorded against the Property in the real property records of Grand County, Utah.

Grand County reserves the right to revoke, deny or suspend any permit, including a land development permit, conditional use permit, building permit, certificate of occupancy, or discretionary approval upon a violation or breach of this Deed Restriction by a record owner of any HDHO Lot or Unit in Grand County. [Ord. 615, 2020.]

**C. Enforcement.** In addition to other remedies preserved herein, Grand County reserves the right to revoke, deny or suspend any permit, including a land development permit, conditional use permit, building permit, certificate of occupancy, or discretionary approval upon a violation or breach of this section by a record owner of any HDHO lot or unit in Grand County.

[Ord. 591, 2019.]

#### 4.7.7 Development Incentives

**A. General.** As a further inducement to the development of primary residential housing beyond the relaxation and flexibility of development standards, the County, where appropriate, may also extend one or more development incentives to an HDHO development, as set forth in subsection B of this section, the selection of which shall depend on the quality, size, nature, and scope of the development being proposed. Incentives shall be targeted to improve the development design or to yield the greatest number of HDHO units, so as to permit the County to meet its estimate of additional housing needs and the goals of the housing element of the County's General Plan.

**B. Additional Development Incentives.** The County may also offer impact fee deferrals or waivers, property tax abatements, or direct financial contributions should the County Commission determine that such incentives are warranted and in the best interest of the County.

[Ord. 591, 2019.]

#### 4.7.8 HDHO District Application [Revised 3/21](#)

**A. Preapplication Conference.** Prior to submission of an HDHO District application, as defined in this section, the developer or subdivider shall meet with the Community Development Director or their designee(s), including other County staff deemed desirable or necessary by the Community Development Director, to discuss the procedures, standards, and regulations hereunder.

**B. Procedure.** An HDHO District application shall be reviewed and approved in accordance with the procedures of Section [9.2](#), Text and Zoning Map Amendments (Rezoning), and shall be considered to be a zoning map amendment.

**C. Application.** A developer or subdivider shall submit an HDHO District application with the information contained in Section [9.2.3](#) together with a development agreement, master plan, and conceptual site plan as follows:

1. The development agreement shall include the following information:
  - a. Legal description of the property;
  - b. Narrative summarizing the proposed development of the property by gross acre, number of lots or units, common area and open space acreage, overall character and architectural style, and other related development features as proposed by the developer or requested by the County;
  - c. Percentage of HDHO lots or units to be developed on the property; and
  - d. Deed restriction required by Section [4.7.6B](#).
2. The master plan shall include the following information:
  - a. Legal description of the property;
  - b. Number and location of lots or units to be developed on the property;
  - c. Percentage of HDHO lots or units to be developed on the property, including designation of the specific HDHO lots or units in accordance with Section [4.7.4](#); and
  - d. Identification of site planning features designed to ensure compatibility between proposed HDHO development and surrounding neighborhoods and land use.
3. The conceptual site plan shall include the information required under Sections [9.17.3A](#) through N.

**D. Recordation.** The developer or subdivider shall record the development agreement and master plan in the real property records of Grand County, Utah, prior to recordation of a final plat approved hereunder or issuance of a building permit for any unit within a site plan approved hereunder. Once approved, the development agreement and master plan may not be amended or modified without reapplication to the County.

**E. Effect.** Review and consideration of an HDHO District application is a discretionary legislative decision. Further, approval of an HDHO District application does not constitute site plan, preliminary plat, or final plat approval. Rather, such approval shall be deemed approval of permission to develop under the standards of this section and the master plan.

**F. Lapse of Approval.** The HDHO District approval shall automatically expire and be void unless the County approves and developer records a site plan or final plat for the HDHO development in accordance with Sections [4.7.9](#) and 9.5 within 24 months of the date of HDHO District approval.

**G. Conflict.** In the event of conflict between the provisions of Section [9.2](#) and this Section [4.7.8](#), this section shall control.

[Ord. 622, 2021; Ord. 591, 2019.]

#### 4.7.9 HDHO Development Plat and Site Plan Approval

**A. Application Procedure.** Review of an HDHO development plat or site plan is an administrative decision, which shall be consistent with the County's prior legislative approval of an HDHO District, the development agreement, and the master plan.

**B. HDHO Development Preliminary Plat and Final Plat.** Each subdivider shall submit and the County shall review a preliminary plat application and final plat application in accordance with Sections [9.4](#) and [9.5](#), Preliminary Plat and Final Plat, and this Section [4.7](#).

1. In addition to the requirements of Sections [9.4.2](#) and [9.5.1](#), Submittal Requirements, each plat shall include:

- a. Designation of HDHO lots in accordance with Section [4.7.4](#);
- b. Deed restriction as required by Section [4.7.6B](#).

**C. HDHO Development Site Plan.** Each developer of a mixed use or multifamily residential HDHO development shall submit and the County shall review a site plan application in accordance with Section [9.17](#), Site Plan Review, and this Section [4.7](#).

1. In addition to the requirements of Section [9.17.3](#), Submittal Requirements, each site plan shall include:

- a. Designation of HDHO units in accordance with Section [4.7.4](#);
- b. Deed restriction as required by Section [4.7.6B](#).

**D.** In the event of conflict between the provisions of Section [9.4](#), [9.5](#), or [9.17](#) and this Section [4.7.9](#), this section shall control.

[Ord. 591, 2019.]

#### 4.7.10 Expiration of High Density Housing Ordinance [Revised 3/21](#)

The ordinance codified in this section shall automatically expire after 300 HDHO lots or units have been approved or after two years, whichever occurs first. A record of the number and location of HDHO lots and units approved shall be kept on file within the Community Development Department at all times. [Ord. 622, 2021; Ord. 591, 2019.]

#### 4.7.11 Enforcement

**A. Penalties for Violation.** As more particularly set forth in Section [1.9](#), Penalties for Violation, any person, firm, entity, or corporation violating any provision or failing to comply with any provision of this section shall be guilty of a Class C misdemeanor. Without limiting the generality of the foregoing, it shall also be a Class C misdemeanor for any person, firm, entity, or corporation to sell or rent an HDHO lot or unit to a household not qualified under this section. It shall further be a Class C misdemeanor for any person, firm, entity, or corporation to provide false or materially incomplete information to the County or its designee or to a seller or lessor of an HDHO lot or unit to obtain occupancy of housing for which the person is not eligible.

**B. Legal Action.** In addition to the remedies set forth in Section [1.9](#), the County may institute any appropriate legal actions or proceedings necessary to ensure compliance with this section, including:

- 1. Actions to revoke, deny or suspend any permit, including a land development permit, conditional use permit, building permit, certificate of occupancy, or discretionary approval;
- 2. Actions to recover from any violator of this section civil fines, restitution to prevent unjust enrichment, and/or enforcement costs, including attorney fees;
- 3. Actions to seek judicial enforcement of such fines, restitution and costs, including judgment liens and foreclosure; and
- 4. Any other appropriate action for unlawful detainer, injunctive relief or damages.

[Ord. 591, 2019.]

#### 4.7.12 Repeal/Savings Clause

Ordinance No. 584, enacted January 15, 2019, is hereby repealed; provided, however, that Ordinance No. 584 shall remain in force to authorize the arrest, prosecution, conviction, and punishment of a person who violates Ordinance No. 584 prior to the effective date of the ordinance codified in this section. [Ord. 591, 2019.]

### 4.8 Scenic Resource Protection District [Revised 3/21](#)

#### 4.8.1 Purpose [Revised 3/21](#)

The Scenic Resource Protection District (SRPD) is an overlay district intended to accomplish one or more of the following purposes:

- A.** Prioritize the preservation of the natural beauty and ecological quality of the gateway to Moab and facilitate the use and enjoyment of the area while providing opportunities for development that enhances the character of the area while not impeding its scenic value;
- B.** Recognize this area as a gateway to the valuable scenic amenities of the greater Moab area, and as an introduction to the character and outdoor ethics of the community;
- C.** Protect and preserve the recreational and conservation uses of the area;

PART II. NON-RESIDENTIAL DISTRICTS. This Part sets forth the standards for development in non-residential districts. Section [5.5.1](#) to [5.5.3](#)

## 5.4 Part I: Residential Districts

### 5.4.1 Residential Development Standards

Development projects may include a mix of housing types as set forth in Section [3.1](#), Use Table.

#### A. Residential Density and Dimensional Standards

Residential development shall be subject to the maximum density and dimensional standards of the underlying base zoning district in accordance with the following table.

Residential Zoning Districts					
Development Standard	MFR	SLR	LLR	RR	RG
Max. Density (units/acre)	8	5	2	1	0.20
Min. Lot Size (acres)	0.125	0.20	0.50	1	5
Min. Project Boundary Buffer Parcel Size	5,445	8,712	21,780	21,780	21,780
Min. Front Yard and Street Side Yard	10'	20'	25'	25'	25'
Min. Interior Side Yard*	10'	10'	10'	15'	15'
Min. Rear Yard	10'	10'	20'	20'	20'
Min Lot Width*	80'	50'	100'	130'	130'
Bldg. Coverage Max.	55%	45%	25%	25%	25%
Max. Height Principal Structure	28'	28'	35'	35'	35'
Max. Height Accessory Structure	28'	28'	35'	35'	35'
*Side setback and min. lot width does not apply to townhome and multi-family shared walls.					

[Ord. 615, 2020.]

#### B. Project Boundary Buffer

1. Project boundary buffers are intended to provide a suitable transition between the proposed subdivision and adjacent development. Buffers are required along all sides of the proposed subdivision that share a boundary with a protected zone district, excluding arterial or collector streets. For projects providing 20 percent or more affordable housing units as defined by Section [6.14](#), the project boundary buffer on each edge shall be 20 feet. For all other projects, the project boundary buffer on each edge shall be 20 feet or the proposed building height, whichever is greater.
2. Buffer width shall be measured perpendicular to the property lines that define the project area.
3. Development projects may include a mix of housing types as set forth in Section [3.1](#), Use Table, so long as the development complies with the maximum density requirement of the underlying base district (see subsection A of this section). [Ord. 549, 2016.]

#### C. Mix of Housing Types

Two-family, townhouse, multi-family residential units may comprise no more than 50 percent of the total dwelling units of any proposed conventional residential subdivision. In no case shall the district density be exceeded for the overall site.

#### D. Constrained Lands

1. Maximum allowable density for constrained lands (or portion of property which constitutes constrained lands) as described in this subsection (below) in all subdivision types shall be reduced by a minimum of 50 percent (see also Section [5.6](#), Measurements, Computations, and Exceptions).
2. Constrained lands include lands with natural slopes greater than 30 percent, jurisdictional wetlands, lands in the 100 year floodplain, public drinking water supply water sources (recharge areas for the aquifer in the Glen Canyon Formation), lands affected by unmitigable geo-hazards, and riparian habitats and archeological sites.
3. Constrained lands in all developments and subdivisions shall be identified on plats and remain unoccupied by buildings or impervious surfaces, unless the applicant demonstrates to the County Commission that this provision would constitute an unusual hardship and is counter to the purposes of this LUC. In cases where a hardship is granted not more than ten percent of any constrained land area shall be occupied by such surfaces.

#### E. Land Suitability

The County shall not approve the subdivision of land if, from adequate investigations conducted by all public agencies concerned, it has been determined that in the best interest of the public, the site is not suitable for platting and development purposes of the kind proposed. Land deemed to be environmentally unsuitable shall not be platted for residential occupancy, or for such other uses as may increase danger to health, life, or property, or aggravate erosion or flood hazard. Such land within the plat shall be restricted for such uses as shall not be endangered by periodic or occasional inundation or shall not produce unsatisfactory living conditions.

## 5.5 Part II: Nonresidential Districts