

ORDINANCE NO. 22-02

AN ORDINANCE AMENDING TITLE 16 OF THE WASATCH COUNTY CODE, TO ALLOW FOR RECORDED DEVELOPMENT APPROVAL MEMORANDUMS IN PLACE OF SIGNED DEVELOPMENT AGREEMENTS, AND UPDATING THE BONDING CODE TO MEET UPDATED UTAH CODE REQUIREMENTS, AND RELATED ISSUES.

WHEREAS, counties may enact all ordinances, resolutions, and rules and may enter into other forms of land use controls and development agreements that they consider necessary or appropriate for the use and development of land within the unincorporated area of the county to provide for the health, safety, and welfare, promote prosperity, improve good order, comfort, convenience, and aesthetics of each county, and to protect both urban and non-urban development; and

WHEREAS, pursuant to this authority, the County Legislative Body enacted the Land Use and Development Code, and now amends the Land Use and Development Code; and

WHEREAS, Utah Code 17-27a-102 allows the county to enact all ordinances, resolutions, and rules and may enter into other forms of land use controls and development agreements that the county considers necessary or appropriate for the use and development of land; and

WHEREAS, Utah Code 17-27a-528 allows the county enter into a development agreement containing any term that the county considers necessary or appropriate to accomplish the purposes of CLUDMA, but does not allow a county to require a development agreement as the only option for developing land within the county; and

WHEREAS, the County Legislative Body desires to Amend Title 16 to allow for developments that do not have any issues that could be well addressed through development agreements, and are for base density to not be required to use a development agreement, but to still require development agreements where it would be helpful due to development issues; and

WHEREAS, the County Legislative Body desires to ensure building permits and certificates of occupancy are only issued in a manner that supports the purpose of the International Building Code, which is to establish the minimum requirements to provide a reasonable level of safety, public health and general welfare through structural strength, means of egress facilities, stability, sanitation, adequate light and ventilation, energy conservation, and safety to life and property from fire and other hazards attributed to the built environment and to provide a reasonable level of safety to fire fighters and emergency responders during emergency operations (IBC 101.3); and

WHEREAS, the County Legislative Body desires to ensure building permits and certificates of occupancy are only issued in a manner that supports the purpose of the International Fire Code, which is to establish the minimum requirements consistent with nationally recognized good practice for providing a reasonable level of life safety and property protection from the hazards

of fire, explosion or dangerous conditions in new and existing buildings, structures and premises, and to provide a reasonable level of safety to fire fighters and emergency responders during emergency operations (IFC 101.3); and

WHEREAS, Utah Code 17-27a-801 requires Wasatch County to not deny an applicant a building permit or certificate of occupancy because the applicant has not completed an infrastructure improvement that is not essential to meet the requirements for the issuance of a building permit or certificate of occupancy under the building code and fire code; and for which the county has accepted an improvement completion assurance for landscaping or infrastructure improvements for the development; and

WHEREAS, Utah Code 17-27a-604.5 requires when a county accepts an improvement completion assurance for landscaping or infrastructure improvements for a development, the county may not deny an applicant a building permit if the development meets the requirements for the issuance of a building permit under the building code and fire code; and

WHEREAS, Utah Code 17-27a-604.5 requires Wasatch County, before an applicant conducts any development activity or records a plat, to require an applicant to complete any required landscaping or infrastructure improvements; or post an improvement completion assurance for any required landscaping or infrastructure improvements; and

WHEREAS, the County Legislative Body desires to ensure the County is issuing building permits and certificates of occupancy as required by Utah Law but also in a manner that conforms to the health, safety, and welfare purposes of the Wasatch County Code, the IFC, and IBC; and

WHEREAS, Wasatch County gave notice of all public meetings and public hearings related to this ordinance as required, and the planning commission held a public hearing as required; and

WHEREAS, the County Legislative Body finds that these amendments more fully promote the objectives and purposes of the general plan and the Land Use and Development Code; and

NOW THEREFORE, the County Legislative Body of Wasatch County ordains as follows:

SECTION I: Repealer. If any provisions of the County Code, policies, procedures, or resolutions heretofore adopted are inconsistent herewith they are hereby repealed.

SECTION II: Enactment. The following amendments, additions, and deletions to Title 16, the Land Use and Development Code, and Title 14, are hereby enacted:

See Attached Exhibit

SECTION III: Effective Date. This Ordinance shall become effective immediately upon execution by the Chair of the County Council and the completion of public notice requirements imposed by state statute.

16.04.02: DEFINITIONS OF TERMS AND WORDS

OPEN SPACE: Land which has an open space easement or deed restriction which states the land shall not be is not covered by dwellings, structures, or by pavement or other impervious material, except for trails and minimal improvements which facilitate recreational use without compromising the open, undeveloped nature of the land, and only as approved by the land use authority. -which is dedicated to be used perpetually by the owners or the public for some other purpose besides development and is owned by the homeowners' association or some other entity besides common ownership.

16.21.06: OPEN SPACE

- A. When open space is required as part of a development approval or where open space is used to comply with another land use ordinance, the open space shall meet the following minimum criteria in addition to any other criteria specified under the applicable land use section:
1. Open space areas shall be protected by a recorded conservation easement enforceable by the county.
 2. Open space areas shall be a minimum of twenty (20) feet at the narrowest point unless otherwise permitted by the applicable land use ordinance.
 3. Open space areas shall not be small isolated remnant parcels that are not contiguous with larger open space parcels.
- B. Ownership Of Open Space: Permanently protected open space created through the development process shall remain undivided and may be owned as common area and managed by a homeowners' association, Wasatch County or a or by a qualified land protection organization under the regulations set forth in 170(h) of the Internal Revenue Code and under Chapter 57-18 of Utah Code, recognized land trust or conservancy. Any ownership other than the homeowners' association common area or Wasatch County is subject to approval by the land use authority. A narrative describing ownership, use and maintenance responsibilities shall be submitted for all common space and public

improvements, utilities and open spaces. Common area or amenity open space within a development shall be owned, administered and maintained by the homeowners' association.

[B. 1-4 unchanged]

C. Maintenance Of Open Space:

1. Maintenance Standards: The ultimate owner of the open space (typically a homeownership association) is responsible to pay for and perform all necessary operation, maintenance and physical improvements to the open space. A homeowners' association may instead be designated as responsible if approved by the land use authority. A homeowners' association shall be authorized under its bylaws to collect dues or assessments etc., in order to pay for said operation and maintenance and to place liens on the property of residents who fall delinquent in payment of such dues, assessments, etc.
2. Maintenance Enforcement:
 - a. In the event that the association or third party owner shall, at any time after establishment of a development containing undivided open space, fail to maintain the undivided open space in reasonable order and condition in accordance with the development plan, the county may serve written notice upon the owner of record, setting forth the manner in which the owner of record has failed to maintain the undivided open space in reasonable condition.
 - b. Failure to adequately maintain the undivided open space in reasonable order and condition constitutes a violation of this chapter.
 - c. If the owner of the open space fails or refuses to provide adequate maintenance, as determined by the county, the county may, but is not required to, perform said maintenance and bill the owner.
 - d. Should any bill for maintenance of the undivided open space be unpaid, a late fee of fifteen percent (15%) would be added to the bill and a lien filed against the land constituting the open space, the lands in the development if the property is owned by the homeowners' association, or any other remedy available to the county.

16.27.07: PROCESS FOR DEVELOPING SMALL SCALE DEVELOPMENTS

A.

16. Exhibit 16 - Draft Development Agreement or Section 16.27.23(A) authorized equivalent (if applicable) in Microsoft Word format; and

16.27.10: PROCESS FOR DEVELOPING LARGE SCALE DEVELOPMENTS

A. [Master Plan]

12. Exhibit 12 - Master Plan Development Agreement in Microsoft Word format using the County provided form development agreement, or equivalent;
- ~~12.~~13. Exhibit 13 – Moderate Income Housing Report as required under Section 16.30.03, a draft Moderate Income Agreement, or a request for permission to pay the Fee in Lieu with final plat recording; and
- ~~13.~~14. Any additional information which the DRC, the county staff, planning commission, and/or legislative body may reasonably require in a specific instance.

C. [Preliminary]

15. Exhibit 15 - Reference to the recorded Master Plan Development Agreement or equivalent, or a Draft Development Agreement in Microsoft Word format if one has not yet been recorded on the project, or a Section 16.27.23(A) authorized equivalent;
16. Exhibit 16 - If applicable, a written response from the applicant demonstrating how each condition of previous approvals either has been or will be satisfied;
- ~~16.~~17. Exhibit 17 – Moderate Income Housing Report as required under Section 16.30.03, a draft Moderate Income Agreement, a request for permission to pay the Fee in Lieu with final plat recording, or only if the legislative body has approved a method of meeting the Moderate Housing requirements of a project, the minutes and staff report showing how the Moderate Income Housing been has addressed; and
- ~~17.~~18. Any additional information which the county staff, planning commission and/or legislative body may reasonably require in a specific instance.

D. [Final]

17. Exhibit 17 - Reference to the development agreement or equivalent that has been recorded on the Project. If a condition of preliminary approval or master plan approval included a development agreement, the development agreement shall be recorded prior to a final application being processed and/or going to the land use authority. If a development agreement or equivalent has not previously been required, a form development agreement or equivalent in Microsoft Word format ~~showing assurances to the county that the services to be provided by the development will continue to be provided by the development on an ongoing basis and will not require the county to take over services in areas outside of the planned urban services areas, and become a financial burden on the county shall be included, and~~ shall be approved and recorded prior to a final plat being recorded;
18. Exhibit 18 - If applicable, a written response from the applicant demonstrating how each condition of previous approvals either has been or will be satisfied;
- ~~18.~~19. Exhibit 19 – A Moderate Income Agreement, a request for permission to pay the Fee in Lieu with final plat recording, or only if the legislative body has approved a method of meeting the Moderate Housing requirements of a project, the minutes and staff report showing how the Moderate Income Housing been has addressed; and

~~19.20.~~ Any additional information which the DRC, county staff, planning commission and/or legislative body may reasonably require in a specific instance.

E. [Final Site Plan Approval]

- F. Plat Recordation: After receiving final approval, but prior to expiration thereof, the developer shall submit the final mylar plat in accordance with Section 16.27.12 of this title and all necessary final documents including the final version of the plat on disk in AutoCAD format, bonds, fees, moderate income housing agreement if applicable, fee-in-lieu if applicable, and/or development agreements or a Section 16.27.23(A) authorized equivalent, which have been signed and notarized by the owner, lienholder and surveyor, as necessary, to the planning department for processing. ~~Prior to the recording of the plat, the subdivision boundary monuments must be placed and all lots staked.~~ An inspection will be performed by the county surveyor's office to verify compliance. The planning department will obtain any signatures necessary from any county department or special service district. After all necessary signatures have been obtained and any outstanding fees and bonds have been paid by the developer, the planning department shall take the plat and documents to the county recorder for recording. All recording fees shall be paid by the developer.

16.27.12: FINAL PLAT REQUIREMENTS

L. A form of certification for the following:

1. Owner's dedications which shall contain the following elements, if applicable:
 - a. The owner shall dedicate and convey to the owners of the lots in all phases of the development all open space, common areas, private trails, private roads, and any other property labeled on the plat as common;
 - b. The owner shall dedicate all property labelled on the plat as public to the public, and all utility easements to the public for use of utility companies as allowed by Wasatch County;
 - c. The owner shall dedicate to Wasatch County, or such other entity as has been approved by the County Council, an open easement in all open space, which shall typically contain the following elements: the owner hereby grants Wasatch County an open space easement in all property shown on this plat as open space. No structure or other development shall be permitted on the open space except as approved by the Wasatch County legislative body. Open space will be labeled as common area, though plat notes shall indicate the required open space easement, unless otherwise approved under Section 16.21.06.

16.27.21: BONDS GUARANTEEING CONSTRUCTION OF IMPROVEMENTS

A. Definitions:

- B. Performance Bonding Required: For subdivision construction permits, the performance bonding requirements of 14.02.04 must be complied with. A performance bond shall be posted with Wasatch County prior to any final approved plat being released by the planning department for recording, or any development activity, in a principal amount of one hundred percent (100%) of the total estimated cost of any improvement or other performance required by or promised to Wasatch County as part of the development, provided the improvements or other performance are not completed and accepted by Wasatch County prior to any final approved plat being released by the planning department for recording. The bond must include protection for the county legislative body, county standards or county code. The bond shall consist of cash, and the bond agreement shall be on a form approved by the county attorney. The Bond Agreement shall require the infrastructure improvements necessary for building codes and fire codes to be met and continue to be met using standard maintenance practices and frequency in the Wasatch Back, to be completed before building permits can be issued, ~~and landscaping improvements to be completed before certificates of occupancy can be issued.~~ The County Manager, in his sole discretion, may accept a letter of credit from an FDIC insured financial institution, or an escrow as approved by the County. Any letter of credit must expire not less than 1 year after the reasonably anticipated completion date of the improvements, at the discretion of the county engineer. The bond, including any escrow or letter of credit, must be subject to the laws of the State of Utah and Wasatch County, and must provide the forum of Wasatch County. The bond may name the developer or the contractor as the "principal". Each bond shall be accompanied by a bond agreement between the developer, contractor, county and financial institution (if applicable and necessary). In no event shall the County be responsible to complete bonded for improvements, in part, because the Utah Code has limited the ability of the County to adequately ensure the completion assurance will be adequate to complete the bonded for improvements, though the County may, in its sole discretion, complete bonded for improvements. The estimated cost shall be based upon the estimate of the county engineer (typically for infrastructure) or the planning director (typically for landscaping), who shall take into account some or all of the following factors when making his estimate:
1. The developer's engineering estimate or landscaping estimate;
 2. The estimate of any reviewing engineer or other qualified reviewer;
 3. The average cost paid for the same type of performance in Wasatch County in the past; and
 4. Any other relevant information.
4. If the performance bond remains in effect for more than a year, the developer shall annually provide an updated cost estimate, and shall bond for any additional costs.

16.27.23: DEVELOPMENT AGREEMENTS OR EQUIVALENT

The county manager may enter into a development agreement with individuals or entities. For small scale developments or site plan approvals, development agreements are only required if the land use authority determines there are unique circumstances that can be well addressed or memorialized through a development agreement. For large scale developments, development

agreements may be recorded at a master plan level, preliminary plan, site plan, or at a final plat approval or all phases of approval, and are required if there are unique circumstances that can be well addressed or memorialized through a development agreement. For large scale developments, a recorded development agreement, or alternative as described below, is required prior to final plat recording.

A. Equivalent Alternative to Development Agreement. In circumstances where there are not unique circumstances that could be well addressed or memorialized through a development agreement, where the application is for base density, and a development agreement would otherwise be required, the applicant may request, and the land use authority may allow for an alternative means of recording the development approval against the property. If approved, at a minimum, a development approval memo shall be recorded against the property at the same time as the final plat, in a form approved by the county attorney, which shall include the following:

1. Vesting date.
2. WCC 16.01.16 in effect.
3. Legal description.
4. Presentations made by staff to the land use authority, DRC reports, conditions of approval, and minutes of any public meetings.
5. Will-Serve letters from the irrigation companies or provider of outside irrigation, gas company, electric company, communication providers, solid waste services and any applicable special service districts.
6. Completion date for any recreational facilities or amenities.
7. Architectural renderings, landscape plans and trail plans for common areas, if any.
8. How moderate income housing requirements are being met, if any.
9. Statement of maintenance obligations for any open space, common area, trails, private roads, detention basins or ponds, retention areas, or private or common community amenities which meets the requirements of Subsections B, C, and D below.
10. Total units/ERU's granted

A-B. Maintenance Obligations: Unless otherwise indicated in the approval, or on the final plat, the developer is required to maintain common areas, trails, private roads, detention basins or ponds, or common community amenities until the maintenance obligations are transferred to the homeowners association. Any development which pursuant to county ordinances, conditions of approval or agreement requires ongoing maintenance obligations to be performed by the developer must comply with the following prior to shifting majority control of the homeowner's association to the individual unit owners:

1. Developer is required to organize a ~~identify the~~ homeowners' association or other entity intended to undertake the ongoing maintenance obligations, if any;
2. Provide all legal documentation necessary for such entity, including a binding agreement to provide continued maintenance;
2. Provide a cash, escrow or letter of credit bond sufficient to pay for the estimated cost, as approved by the county, to provide said maintenance for five (5) years. The bond may be released once a homeowners' association or other ongoing entity is sufficiently established, as determined by the planning director, to carry

~~out the maintenance obligations. In determining if the homeowner's association is adequately funded, the planning director may require the developer to perform a reserve analysis similar to that outlined in Utah Code 57-8a-211, in order to prove the homeowner's association has adequate reserve funds; and~~

~~3. In the event the developer fails to create an HOA, and maintenance is not otherwise provided for, the individual lots owners in the subdivision shall share the obligation to maintain common areas, trails, private roads, detention basins or ponds, or common community amenities.~~

~~3.4. In the event Developer or the Home Owners' Association or property owner fails to maintain the common areas, trails, private roads, detention basins or ponds, or common community amenities, the County may (but is not obligated to) maintain them. The market value of the cost of this maintenance shall constitute a valid lien on the Property and its lots on a parity with and collected at the same time and in the same manner as general County taxes that are a lien on the Property.-~~

~~B.C.~~ Transfer Maintenance Obligations: It is anticipated that developer will transfer certain maintenance obligations to the homeowners' association. The association shall be a nonprofit corporation formed in accordance with the state and federal law. The association shall have authority to impose fees sufficient to perform the maintenance obligations transferred to it.

~~C.D.~~ Written Transfer Agreement Required: In the event developer transfers the developer's maintenance obligations to the homeowners' association; the developer shall do so by written transfer agreement between the developer and the acting HOA president. ~~approved by the county.~~ The developer shall ~~also ensure, to the reasonable satisfaction of the County,~~ that the maintenance obligations of the homeowners' association have been adequately funded and kept up to date when the developer loses majority control of the homeowner's association by ensuring the HOA would have adequate reserve funds pursuant to the standards of Utah Code 57-8a-211.

14.01.02: RESPONSIBILITIES OF DEPARTMENT

The building department shall be responsible for the following functions and duties:

H. Issue permits and certificates for building, plumbing, electrical, heating, cooling and other construction phases as required by law, and only in a manner ensuring a reasonable level of life, safety, health, general welfare, and property protection from the hazards of fire, explosion, dangerous conditions, inadequate structural strength, inadequate egress, inadequate stability, inadequate sanitation, inadequate light, or other hazards in new and existing buildings, structures and premises, and to provide a reasonable level of safety to fire fighters and emergency responders during emergency operations as intended by the International Fire Code, International Building Code, and the purposes of other International Codes administered by the building department. In no event shall the County be responsible for damages associated with defective or incomplete infrastructure, buildings, grading, or landscaping, or related development improvements, even if the County has inspected or received bonding for such improvements.

14.02.04: EXCAVATION, FILL, CONSTRUCTION, SWPPP, AND EROSION CONTROL

B. Subdivision Bonding:

1. Performance Bond: For Subdivision Construction Permits, a performance bond shall be posted with Wasatch County prior to any final approved plat recorded in a principal amount of one hundred percent (100%) of the total estimated cost of any improvement or other performance required by or promised to Wasatch County as part of the development, provided the improvements or other performance are not completed and accepted by Wasatch County prior to any final approved plat being recorded. The bond must include protection for the county legislative body, must meet county standards or county code. The bond shall consist of cash, and the bond agreement shall be on a form approved by the County Attorney. The Bond Agreement shall require the infrastructure improvements necessary for building codes and fire codes to be met and continue to be met using good management practices and frequency in the Wasatch Back, to be completed before building permits can be issued. The County Manager, in his sole discretion, may accept a letter of credit from an FDIC insured financial institution, or an escrow as approved by the County. Any letter of credit must expire not less than 1 year after the reasonably anticipated completion date of the improvements, as determined in the discretion of the county engineer. If the performance bond remains in effect for more than a year, the developer shall annually provide an updated cost estimate, and shall bond for any additional costs. In no event shall the County be responsible to complete bonded for improvements, in part, because the Utah Code has limited the ability of the County to adequately ensure the completion assurance will be adequate to complete the bonded for improvements, though the County may, in its sole discretion, complete bonded for improvements. The bond must be subject to the laws of the State of Utah and Wasatch County, and must provide the forum of Wasatch County. The bond may name the developer or the contractor as the "principal". Each bond shall be accompanied by a bond agreement between the developer, county and financial institution (if applicable). The estimated cost shall be based upon the estimate of the engineering coordinator, who shall take into account some or all of the following factors when making his estimate:
 - a. The developer's engineering estimate;
 - b. The estimate of any reviewing engineer;
 - c. The average cost paid for the same type of performance in Wasatch County in the past; and
 - d. Any other relevant information.

SECTION IV: **Severability.** If any section, subsection, sentence, clause, or phrase of this ordinance is declared invalid or unconstitutional by a court of competent jurisdiction, said portion shall be severed and such declaration shall not affect the validity of the remainder of this ordinance.

SECTION V: **Public Notice.** The Wasatch County Clerk, and ex officio Clerk of the Wasatch County Council, is hereby ordered, in accordance with the requirements of Section 17-53-208, Utah Code Annotated, 1953, as amended, to do as follows:

- a. Enter at length this ordinance in the ordinance book;
- b. Deposit a copy of this ordinance in the office of the County Clerk;
- c. Publish a short summary of this ordinance, together with a statement that a complete copy of the ordinance is available at the County Clerk's office and with the name of the members voting for and against the ordinance, for at least one publication in a newspaper published in and having general circulation in the county; or post a complete copy of this ordinance in nine (9) public places within the County.

APPROVED and PASSED this 16 day of February, 2022.

Attest:

Joey Granger

 Joey Granger
 Wasatch County Clerk



WASATCH COUNTY COUNCIL:

Mark Nelson

 Mark Nelson, Chair
 Wasatch County Council

*ratified by Council
on 3-2-2022*

	VOTE
Mark Nelson, Chairman	<u>✓</u>
Danny Goode	<u>✓</u>
Spencer Park	<u>✓</u>
Kendall Crittenden	<u>✓</u>
Jeff Wade	<u>✓</u>
Marilyn Crittenden	<u>✓</u>
Steve Farrell	<u>✓</u>

ADOPTION OF ORDINANCE AFFIDAVIT

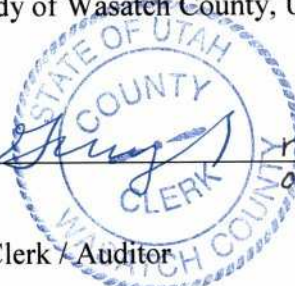
STATE OF UTAH)
 : ss.
COUNTY OF WASATCH)

I, the undersigned, the duly qualified and acting County Clerk of Wasatch County, Utah, and ex officio Clerk of the Wasatch County Council, do hereby further certify, according to the records of said Council in my official possession, and upon my own knowledge and belief, that I have fulfilled the requirements of Section 17-53-208, Utah Code Annotated, 1953, as amended, by:

- [✓] (a) Causing this ordinance to be entered at length in the ordinance book;
- [✓] (b) Causing three (3) copies of this ordinance to be deposited in the office of the County Clerk;
- [✓] (c) Causing a short summary of this ordinance, together with a statement that a complete copy of the ordinance is available at the County Clerk's office and with the name of the members voting for and against the ordinance to be published for at least one publication in The Wasatch Wave, a newspaper of general circulation within the geographical jurisdiction of Wasatch County; or posting a complete copy of this ordinance in nine (9) public places within the County.

IN WITNESS WHEREOF, I have hereunto subscribed my official signature and impressed hereon the official seal of the County Legislative Body of Wasatch County, Utah, this 16 day of February, 2022.

Joey D. Granger ratified by Council
 on 3-2-2022
 Joey Granger
 Wasatch County Clerk / Auditor



SUBSCRIBED AND SWORN to me, a Notary Public, this 16 day of February, 2022.

Wendy MCKnight ratified by Council
 on 3-2-2022
 Notary Public

Residing in: Wasatch
 My commission expires: 09/10/2022

