

ORDINANCE NO. 2007-09

AN ORDINANCE AMENDING CHAPTER 12.6.17 OF THE LAND USE ORDINANCE REMOVING DENSITY INCENTIVES AND MAKING OTHER CHANGES TO THE CLUSTERED RESIDENTIAL OVERLAY (CRO) ZONE.

WHEREAS two members of the City Council have initiated an amendment of Chapter 12.6.17 of the Land Use Ordinance to remove density incentives and making other changes to the CRO Zone; and

WHEREAS the Planning Commission held a public hearing, has reviewed the application, and made a recommendation to the City Council concerning the proposed change to Chapter 12.6.17 of the Land Use Ordinance, and the City Council has found the proposed zoning amendments to be consistent with the City General Plan; and

WHEREAS the proposed text amendment set forth herein has been reviewed by the Planning Commission and the City Council, and all appropriate public hearings have been held in accordance with Utah law to obtain public input regarding the proposed revisions to the Land Use Ordinance;

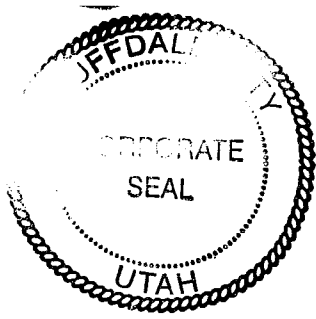
NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF BLUFFDALE CITY, STATE OF UTAH AS FOLLOWS:

Section 1. **Amendment of Chapter 12.6.17 of the Land Use Ordinance.** Chapter 12.6.17 of the Bluffdale City Land Use Ordinance is hereby amended as set forth in **Exhibit A**, attached hereto.

Section 2. **Severability.** If any part or provision of this Ordinance is held invalid or unenforceable, such invalidity or unenforceability shall not affect any other portion of this Ordinance, and all provisions, clauses and words of this Ordinance shall be severable.

Section 3. **Effective Date.** This Ordinance shall take effect upon publication or posting, or thirty (30) days after passage, whichever occurs first.

PASSED AND ADOPTED BY THE CITY COUNCIL OF BLUFFDALE CITY, STATE OF UTAH, THIS 27th DAY OF FEBRUARY, 2007.



BLUFFDALE CITY

ATTEST:

Leddie K. Bee
Recorder

[Signature]
Mayor

[SEAL]

Voting by the City Council:

	"AYE"	"NAY"
Councilmember Briggs	<u>Absent</u>	_____
Councilmember Kelley	<u>x</u>	_____
Councilmember Lord	<u>x</u>	_____
Councilmember Maxwell	<u>x</u>	_____
Councilmember Speed	<u>x</u>	_____

EXHIBIT A
CHAPTER 12.6.17

Chapter 12.6.17

Cluster Residential Overlay Zone

(adopted 10/8/2002 Ord. 2002-17; revised 02/27/2007, Ord. 2007-09)

- 12.6.17.1 Purpose and Zone Characteristics**
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- 12.6.17.19 Open Space Use Regulations**
- 12.6.17.20 Open Space Design Standards**
- 12.6.17.21 Permanent Protection of Open Space**
- 12.6.17.22 Ownership of Open Space**
- 12.6.17.23 Maintenance of Open Space**

12.6.17.1 Purpose and Zone Characteristics

The Cluster Residential Overlay (CRO) Zone is established to provide for cluster residential development within limited areas of the City. It is expressly provided that the CRO Zone is not intended to be utilized for all residential development within the City, but should be limited to such areas and for development of property containing unique or sensitive lands and/or property which is located adjacent to compatible development within neighboring jurisdictions. The CRO Zone shall only be permitted for property with the underlying zone designation of A-5 and R-1-43.

12.6.17.2 Intent

The CRO zone is intended to provide subdivision development and layout techniques which encourage flexible, imaginative and efficient subdivision patterns, active and passive open space areas and trails, creative lot configurations, desirable subdivision design features, efficiencies in the delivery of required services, and reduced initial development and ongoing maintenance costs. The CRO Zone is provided to encourage flexible, efficient and imaginative subdivision design and development within the City in a manner that:

- (a) Protects scenic, historic and sensitive lands, including those areas containing features such as steep slopes, wildlife habitat, floodplains and wetlands, by setting them aside from development;
- (b) Preserves and conserves open space land, including those areas containing unique or natural features;
- (c) Provides greater design flexibility and efficiency in the siting and delivery of services and infrastructure, including the opportunity to reduce length of roads, utility runs, and the amount of paving required for residential development;

- (d) Reduces erosion and sedimentation by the retention of existing vegetation and the minimization of development on steep slopes and other sensitive lands;
- (e) Provides for the creation of greenway systems, open space, and useable recreation areas and trails within the City for the benefit of present and future residents;
- (f) Encourages imaginative approaches to land development in harmony with natural features of the land;
- (g) Protects areas of the City with productive agricultural soils for continued agricultural use by conserving blocks of land large enough to allow for viable farm operations;
- (h) Creates neighborhoods with direct visual and/or recreational access to sensitive and open space land;
- (i) Provides for the conservation and maintenance of sensitive and open space land within the City to achieve the above-mentioned goals;
- (j) Provides design alternatives for landowners to minimize impacts on environmental resources such as wetlands, floodplains, and steep slopes, and to minimize disturbance of natural or cultural features; and

12.6.17.3 Application and Procedure

All requests to establish a CRO Zone shall be submitted to the City consistent with Chapter 12.2 of this Title and other applicable City policies and procedures. In addition to the application requirements set forth in Chapter 12.2, all applications for the rezone of property to CRO Zone shall include the following:

- (a) A Sensitive Areas Designation Plan prepared in accordance with the provisions of Section 12. 6.17.13 regarding sensitive area designation plans required for Cluster Subdivision applications;
- (b) A Compatibility Plan identifying all uses, zoning and density of development and property adjacent to the subject property proposed for rezoning; and
- (c) A Schematic Plan showing how the property could be developed as a Cluster Subdivision. The Schematic Plan shall be used for illustrative purposes only for determining whether the proposed rezone is appropriate for the particular property and shall not be considered to constitute a Concept Plan or an approval of any given layout or development of the property.

12.6.17.4 Considerations for CRO Zoning

In considering a request to rezone property to the CRO Zone, the City shall consider the following:

- (a) the harmony and compliance of the proposed location of the CRO Zone with the objectives and requirements of the City General Plan and Zoning Ordinances;
- (b) the harmony and compatibility of the proposed location of the CRO Zone with adjacent properties and uses;
- (c) whether or not the proposed location of the CRO Zone may be injurious to potential or existing development within the vicinity;
- (d) the compatibility of the proposed location of the CRO Zone with the underlying zone and neighboring development;
- (e) the economic impact of the proposed development and uses on the surrounding area; and

(f) the harmony and compliance of the proposed location of the CRO Zone with the purpose, intent and objectives of the CRO Zone.

12.6.17.5 Underlying Zone

The CRO Zone classification is intended to act as an overlay zone, the sole purpose of which is to permit property to be developed utilizing the cluster residential subdivision process and provisions. Except as otherwise provided herein, all provisions of the underlying base zone of any property with the CRO Zone designation shall apply.

12.6.17.6 Permitted, Conditional and Accessory Uses

Permitted, conditional and accessory uses within the CRO Zone shall be based upon the permitted, conditional and accessory uses within the underlying base zone of the property. In addition to such permitted, conditional and accessory uses as determined by the base zone of the property, cluster residential subdivisions developed in accordance with the terms and conditions set forth herein shall be a permitted use in the CRO Zone.

12.6.17.7 Definitions

For purposes of this Chapter, the following terms shall have the meanings described:

(a) Cluster Subdivision. A Cluster Subdivision is the partitioning of land to provide lots with some or all of the lots reduced below the minimum lot size required by the underlying zoning district in which the Cluster Subdivision is located and providing for a minimum of fifteen percent (15%) of the total subdivision property as open space in accordance with the terms and conditions of this Chapter.

(b) Open Space. Open space shall mean land located within the area of the Cluster Subdivision which is not individually owned by residents of the subdivision and which is provided in perpetuity for the protection, preservation, or conservation of environmentally sensitive areas or for the use and enjoyment of owners within the subdivision or residents of the City as a whole, and provided as required in this Chapter, and which is not already protected from development.

(c) Sensitive Areas. Sensitive areas or lands shall mean:

(1) Wetlands, as identified by the U.S. Army Corps of Engineers, or a wetlands delineation, as provided by a certified wetlands delineator;

(2) Floodplains and floodways, as identified by the latest FIRM maps, as provided by the Federal Emergency Management Agency;

(3) Steep slopes, areas of slope at or exceeding a thirty percent (30%) grade or 3:1 run to rise ratio; and

(4) Fault lines, stream corridors and other areas encumbered by geological hazards.

12.6.17.8 Voluntary Alternative

The election to develop property with the CRO Zone as a Cluster Subdivision is voluntary and provided to developers and property owners as an alternative to development of property as a conventional subdivision pursuant to other applicable provisions of this Title. Cluster Subdivisions may be developed within the A-5 and R-1-43 zone of the City. As allowed by this Section, Cluster Subdivisions shall be developed in accordance with and subject to the development standards, conditions, procedures and regulations of this Chapter and with all other applicable subdivision ordinances and zoning regulations of the City which are not otherwise in conflict with the provisions of this Section.

12.6.17.9 Minimum Acreage

A Cluster Subdivision may be developed on property consisting of a minimum of twenty (20) acres of contiguous land.

12.6.17.9.1 Disallowed Acreage

A cluster subdivision may not include areas, features, acreage or other lands which

- (a) are either not owned or not controlled by the developer,
- (b) the developer or landowner do not have right to develop,
- (c) were previously or are concurrently included within another CRO Zone, or
- (d) are already protected from development by law, deed, easement or other means.

12.6.17.10 Approval Process

Applications for a Cluster Subdivision shall be submitted and processed in accordance with the requirements and procedures set forth in the City Subdivision Ordinance, including, but not limited to, submission and approval of concept, preliminary and final plats, and any additional procedural requirements set forth in this Section. Any amendments to approved plans, specifications and plats shall be obtained by following the procedure required for original approval.

12.6.17.11 Approval Criteria

A Cluster Subdivision may be approved only if the City Council finds that a proposed subdivision plan:

- (a) Will better preserve and enhance the subject property by integrated planning and design as a whole, pursuant to the provisions of this Chapter, than would be possible under conventional subdivision regulations;
- (b) Does not conflict with any applicable policy of the General Plan;
- (c) Meets the intent and purpose of this Chapter; and
- (d) Will provide better site design and increased amenities than would be likely if the property were developed as a conventional subdivision.

12.6.17.12 Base Density

The base density for a Cluster Subdivision shall be determined by dividing the total acreage of the subdivision site by the minimum lot size requirement of the underlying zoning district in which the proposed Cluster Subdivision is located and multiplying the result by 0.85.

12.6.17.13 Sensitive Area Designation Plan

- (a) Required. All applications for a Cluster Subdivision shall include a Sensitive Area Designation Plan prepared in accordance with the provisions set forth herein.
- (b) Identification of Sensitive Lots. The Sensitive Area Designation Plan shall identify all sensitive lands within the property boundaries, including, but not limited to, floodplains, wetlands, fault lines, geological hazards and steep slopes.
- (c) Identification of Resources. The Sensitive Area Designation Plan shall also clearly identify all natural or cultural resources present on the property and within four hundred (400) feet of the property, including, but not limited to, geographic features, including, but not limited to, meadows, grasslands, tree stands, streams, stream corridors, flood walls, berms, watercourses, farmland, wildlife corridors and/or habitat, historic buildings and/or sites, archeological sites, cultural features, and green space.

(d) Applicant Responsibility. Applicants are solely responsible for checking and ensuring the accuracy and designation of such areas on the Sensitive Area Designation Plan for their particular project and applicable property.

12.6.17.14 Master Development Plan

When deemed necessary or desirable by the City, application and approval for a Cluster Subdivision may require the submission and approval by the City of a Master Development Plan and/or Development Agreement. Such Master Development Plan and/or Development Agreement may be required by the City at any stage of the subdivision approval process.

12.6.17.15 Minimum Open Space

A Cluster Subdivision shall provide a minimum of fifteen percent (15%) of the total acreage of the property within the subdivision as dedicated open space in accordance with the open space standards, maintenance and dedication requirements set forth herein. Such required open space may include areas such as wetlands, floodplains, fault lines, geological hazards and steep slopes, but shall not include areas within any lot, road, street or right-of-way. For purposes of this Section, open space shall not be considered lands used for schools, churches, public facilities or other similar encumbered uses.

12.6.17.16 Subdivision Design Features

(a) Unified and Consistent Cluster Subdivision and Architectural Building Design Theme. Cluster Subdivisions shall provide and incorporate a consistent design theme, including unified design of subdivision elements, such as street signage, lighting, fencing, entry treatments and features, landscaping, and other elements, and provide unified architectural building styles, including consistency in building materials, colors, of a type and quality not typically provided in a conventional subdivision.

(b) Improvements and Enhancements to Open Space Areas. A Cluster Subdivision shall provide for the stabilization of sensitive areas, including stabilization of drainage ways, the protection of wetlands, enhancements to wildlife habitat areas, improvements to open space areas to facilitate public use, other open space area improvements and amenities, the provision of a publicly accessible and improved trail system and providing appropriate linkages and connections to existing or proposed trails.

12.6.17.17 Lot Standards

(a) Lot Area. In order to provide for clustering of homes and additional density incentives, lots within a Cluster Subdivision may be smaller than the minimum size required in the underlying zone, as approved by the City, provided, no lot shall be smaller than one half ($\frac{1}{2}$) acre.

(b) Lot Width and Frontage. The minimum lot width and lot frontage for lots within a Cluster Subdivision may be reduced from the minimum lot width and frontage requirements of the underlying zone, as approved by the City.

12.6.17.18 Yard Regulations

The builder or developer of a Cluster Subdivision is encouraged to consider variations in the principal building position and orientation, but shall observe the following minimum standards for buildings within a Cluster Subdivision. Exceptions to these minimum setback regulations may be approved by the City, in its sole discretion, during the plat approval process when deemed appropriate and desirable under the circumstances.

(a) Front Setback. The minimum front yard setback for main buildings in a Cluster Subdivision shall be forty (40) feet.

(b) Rear Setback. The minimum rear yard setback for main buildings within a Cluster Subdivision shall be thirty (30) feet.

(c) Side Setback. The minimum side yard setback for main buildings within a Cluster Subdivision shall be ten

(10) feet with a required twenty (20) foot separation for principal buildings.

(d) Side Corner Setback. The minimum side corner setback for main buildings within a Cluster Subdivision shall be twenty (20) feet from the property line.

12.6.17.19 Open Space Use Regulations

(a) Permitted Uses. The following uses are permitted in open space areas if approved as part of a Cluster Subdivision:

- (1) Conservation of open land in its natural state;
- (2) Agricultural and horticultural uses and the keeping of large animals consistent with the permitted uses in the underlying zone;
- (3) Neighborhood open space uses such as village greens, commons, picnic areas, community gardens, trails, and similar low-impact passive recreational uses specifically excluding motorized off-road vehicles, rifle ranges, and other similar uses;
- (4) Active non-commercial recreation areas, such as playing fields, playgrounds, trails, and swimming pools;
- (5) Stormwater detention areas designed, landscaped, and available for use as an integral part of open space land;
- (6) Underground utility easements, facilities and rights-of-way for drainage, access, sewer or waterlines, or other public purposes;
- (7) Above-ground utility and street rights-of-way may traverse open space land if permitted under City Ordinances; provided, areas encumbered by such facilities and/or rights-of-way shall not be counted towards the minimum required open space land for the Subdivision; and
- (8) Fencing, when deemed necessary and appropriate for the particular use, condition, purpose and/or location of the open space land.

(b) Prohibited Uses. The following uses shall be considered prohibited in open space areas:

- (1) Any residential, commercial or industrial activity;
- (2) Any development, construction or location of any man-made modification or improvements such as buildings, structures, roads, parking lots, or other improvements, except as approved by the City in conjunction with a permitted use;
- (3) Any filling, dredging, excavating, mining, drilling, or exploration for and extraction of oil, gas, minerals or other resources from the property;
- (4) Any dumping or storing of trash, garbage or junk;
- (5) Burning of any materials, except as necessary for agricultural, drainage and fire protection purposes;
- (6) The use of motor vehicles, including snowmobiles, all-terrain vehicles, motorcycles and other recreational vehicles, except as may be necessary to maintain and operate the property and/or utility facilities within the property or to conduct permitted uses on the property such as agricultural uses;
- (7) Hunting or trapping for any purpose other than predatory or problem animal control;

(8) Advertising of any kind or nature and any billboards or signs; provided, directory and information signs may be displayed describing the easement and prohibited or authorized use of the same, or trail information;

(9) Any cutting of trees or vegetation, except as necessary for fire protection, thinning, elimination of diseased growth, control of non-native plant species, restoration of native species, maintenance of landscaped areas, and similar protective measures or those activities relating to permitted agricultural uses;

(10) The change, disturbance, alteration, or impairment of significant natural ecological features and values of the property or destruction of other significant conservation interests on the property;

(11) The division, subdivision or de facto subdivision of the property;

(12) Changing the topography of the property by placing on it any soil, dredging spoils, land fill, or other materials, except as necessary to conduct specific permitted purposes; and

(13) All other uses and practices inconsistent with and detrimental to the stated objectives and purpose of the easement.

12.6.17.20 Open Space Design Standards

Designated open space land within a Cluster Subdivision shall meet the following standards:

(a) Significant Areas and Features. Open space land should include the most unique and sensitive resources and locally significant features of the property within the Subdivision such as meadows, grasslands, tree stands, streams, stream corridors, watercourses, wildlife corridors and/or habitat, historic buildings and/or sites, archeological sites, cultural features, green space, scenic views, etc.

(b) Contiguous Land. Open space lands within a development shall be contiguous to provide for large and integrated open space areas within the Cluster Subdivision. Non-contiguous parcels of open space land may be approved by the City during the plat approval process upon a finding that such exception is necessary and/or desirable based upon consideration of the size of the project, the size of the open space parcels, the types of features and resources included within the open space lands, and other relevant considerations. Long, thin strips of open space (less than 100 feet wide) are prohibited, unless approved by the City during the plat approval process upon a finding that such configuration of the open space is necessary and/or desirable to connect other significant areas, to protect linear resources such as streams or trails, or to provide a buffer.

(c) Open Space Network Connection. Open space within a Cluster Subdivision shall be designed and laid out as part of a larger continuous and integrated open space system to ensure that an interconnected network of open space will be provided throughout the City.

(d) Visibility. Open space land shall be located and designed within the Cluster Subdivision to add to the visual amenities of neighborhoods and to the surrounding area by maximizing the visibility of internal open space.

(e) Pedestrian Access. Developer shall provide adequate pedestrian access to open space land which is open to public or resident use.

(f) Maintenance Access. Developer shall provide sufficient maintenance access to all open space land within the Cluster Subdivision.

(g) Landscaping. All open space land that is not wooded, farmed, or maintained as open space meadows, grassland, or other approved open space, shall be landscaped at developer's sole cost and expense in accordance with landscaping requirements for subdivisions.

12.6.17.21 Permanent Protection of Open Space

(a) Conservation Easement. All open space land shall be permanently restricted from future development by a conservation easement or other method of protection and preservation acceptable to the City. Under no circumstances shall any development be permitted in the open space land at any time, except for those permitted uses listed herein and approved in conjunction with the Cluster Subdivision. All conservation easements, or other acceptable method of protection and preservation of the open space land within a Cluster Subdivision, shall be approved by the City and recorded prior to or concurrent with the recording of the final plat for the Cluster Subdivision.

(b) Terms and Conditions. All conservation easements, or other acceptable method of protection and preservation of the open space land within a Cluster Subdivision, shall comply with the Utah Conservation Easement Act as set forth in *Utah Code Ann. §§ 57-18-1, et seq.*, and shall be in substantially the same form as the standard conservation easement form provided by the City, including, at a minimum, the following terms and/or conditions:

- (1) Legal description of the easement;
- (2) Description of the current use and condition of the property;
- (3) Permanent duration of the easement;
- (4) Permitted uses;
- (5) Prohibited development and/or uses;
- (6) Maintenance responsibilities and duties; and
- (7) Enforcement rights and procedures.

(c) Grantee. Unless otherwise approved by the City, the grantee of a conservation easement shall consist of one of the following acceptable entities, which entity shall be qualified to maintain and enforce such conservation easement: land trust, conservation organization or governmental entity. The City may, but shall not be required to, accept, as grantee, a conservation easement encumbering open space lands within a Cluster Subdivision, provided there is no cost of acquisition to the City for the easement and sufficient access to and maintenance responsibilities regarding the open space land are provided.

12.6.17.22 Ownership of Open Space

Unless otherwise approved by the City and subject to the provisions set forth in this Chapter, the underlying fee ownership of the open space land shall remain in single ownership and may be owned and maintained by one of the following entities: homeowners' association, land trust, conservation organization, governmental entity, or private individual. Property subject to a conservation easement, or other acceptable method of protection and preservation, shall not be subdivided.

12.6.17.23 Maintenance of Open Space

(a) Costs. Unless otherwise agreed to by the City, the cost and responsibility of maintaining open space land shall be borne by the owner of the underlying fee of the open space land.

(b) Plan. The developer shall submit a Maintenance Plan providing for and addressing the means for permanent maintenance of the open space land within the proposed Cluster Subdivision with the preliminary plat application for the subdivision. The Maintenance Plan shall provide the following:

- (1) The Plan shall define ownership.
- (2) The Plan shall establish necessary regular and periodic operation and maintenance responsibilities for

the various kinds of open space.

(3) The Plan shall estimate staffing needs, insurance requirements, and associated costs, and define the means for funding the maintenance of the open space land and operation of any common facilities on an on-going basis. Such funding plan shall include the means for funding long-term capital improvements as well as regular yearly operating and maintenance costs.

(4) At the City's discretion, the applicant may be required to escrow sufficient funds for the maintenance and operation costs of common facilities.

(c) Approval. The Maintenance Plan must be approved by the City prior to or concurrent with final plat approval for the subdivision. The Maintenance Plan shall be recorded against the property and shall include provisions for the City's corrective action rights as set forth herein. Any changes or amendments to the Maintenance Plan shall be approved by the City.

(d) Failure to Maintain. In the event that the organization established to maintain the open space land and the common facilities, or any successor organization thereto, fails to maintain all or any portion thereof in reasonable order and condition, the City may assume responsibility, as a right but not an obligation, for maintenance, in which case any escrow funds may be forfeited and any permits may be revoked or suspended.

(e) Corrective Action. The City may enter the premises and take corrective action, including extended maintenance. The costs of such corrective action may be charged to the property owner and may include administrative costs and penalties. Such costs shall become a lien on said properties. Notice of such lien shall be filed by the City in the County Recorder's office. The Maintenance Plan and all other documents creating or establishing any association or conservation organization for the property shall reference the City's corrective action authority set forth herein and shall be recorded against the property.

(f) Special District. The City may establish a special district consisting of the residences within a Cluster Subdivision to provide for up to 75 percent of the on-going funding and administration of the maintenance plan if the open space and any improvements are dedicated or conveyed to and accepted by the City, including associated escrow funds.