



ORDINANCE NO. 2013- 9

**AN ORDINANCE AMENDING CHAPTER 6, LARGE SCALE DEVELOPMENTS,
SECTION 6-1, GENERAL PROVISIONS, SUBSECTIONS 6-3-E-17 THROUGH 27,
DEALING WITH IMPROVEMENTS AND BONDING FOR LARGE SCALE
DEVELOPMENTS**

WHEREAS, the Board of County Commissioners initiated a review of the Utah County Land Use Ordinance (UCLUO), dealing with the requirements for Large Scale Developments relative to improvements and bonding; and

WHEREAS, the Planning Commission addressed the proposed amendments to the Utah County Land Use Ordinance during the regularly scheduled meeting of the Planning Commission, scheduled and held a public hearing regarding the proposed amendments, and made a recommendation to the Board of County Commissioners regarding the proposed amendments; and

WHEREAS, the Board of County Commissioners has received and carefully reviewed the recommendation from the Planning Commission regarding the proposed amendments, and the minutes from the Utah County Planning Commission meeting and public hearing regarding the proposed amendments to the Utah County Land Use Ordinance; and

WHEREAS, the Board of County Commissioners has received and carefully reviewed the input, documents, and testimony from the public regarding the proposed amendments to the Utah County Land Use Ordinance; and

WHEREAS, the Board of County Commissioners finds that the proposed amendments to the Utah County Land Use Ordinance are in the best interest of the health, safety, and welfare of the citizens of Utah County, considering all factors.

**NOW, THEREFORE, THE COUNTY LEGISLATIVE BODY OF UTAH COUNTY ORDAINS
AS FOLLOWS:**

Part I:

Subsections 6-1-E-17 through 27 of the Utah County Land Use Ordinance are hereby amended to read as follows:

6-1: GENERAL PROVISIONS

E. PROCEDURES

17. Construction of Required Improvements

- a. After receiving final approval from the County Commission, the developer shall execute a subdivision improvement and warranty agreement, in the form approved by the County, and (i) prior to recording the plat and prior to any development activity, the developer shall, within a period of time not to exceed one year from the date of the approval of the development by the County Commission, or if a phased planned unit development then within the time deadlines outlined in subsection 16 of this part, construct and complete all required improvements and post a cash warranty bond with the County; or (ii) upon request by the developer, the developer may post a cash construction bond with the County before recording the plat, in an amount equal to 125% of the estimated cost of the required improvements, as determined by the County Engineer, to guarantee the installation of the required improvements without cost to Utah County, and a cash warranty bond. The final plat shall not be recorded until the developer has executed a subdivision improvement and warranty agreement, in the form approved by the County, and the improvements are either constructed or the construction bond and the warranty bond are delivered to and approved by the County. The construction bond, however, shall not limit the liability of the developer to install improvements, for the developer shall be obligated to the full extent of the cost of installing the improvements required by this ordinance. Private parties shall not be deemed third-party beneficiaries of the construction bond or of the warranty bond.
- b. All required improvements shall be constructed in accordance with approved plans and Utah County development standards and inspected by the County Engineer. The developer shall pay an inspection fee to the County in the amount set by the County.

18. Duration of Bonds

The bonds required under the provisions of this ordinance shall not expire.

19. Default

In the event the developer fails to satisfactorily construct the required improvements within the period required, fails to pay all costs of materials and labor for the improvements, or otherwise fails to comply with the subdivision improvement and warranty agreement, Utah County may send a notice of default, take action to collect the bonds, and install or cause the required improvements to be installed, using the proceeds from the bonds to defray the expense thereof.

20. Timing of Construction

- a. All required improvements shall be constructed and completed by the developer within one (1) year from the date of the approval of the development by the County Commission, or if a phased planned unit development then within the time

deadlines outlined in subsection 16 of this part. However, the County Commission may require the developer to install what it determines to be critical improvements on all or part of an approved large scale development within a time period which is less than the maximum time period specified.

- b. The County Commission may, upon the favorable written recommendation of the County Engineer, who shall consult with the owner of the applicable utility poles, allow for a period of time in excess of one (1) year from the date of the approval of the development by the County Commission, but not more than ten (10) years from the date of the approval of the development by the County Commission, unless a further extension of time is subsequently approved by the County Commission, to relocate existing utility poles from their current location to the newly created lot line, if the County Engineer and the County Commission find that all of the following conditions exist:
- 1) The large scale development is a one or two lot subdivision;
 - 2) The owner of the poles has provided a written statement to the County indicating that the pole relocation is not necessary at the present time;
 - 3) The County Engineer has provided a written statement to the County that the delayed relocation of the poles will not constitute a hazard to public safety;
 - 4) The developer has posted a cash bond with the County in an amount of not less than 125% of the estimated cost to relocate the poles, if the poles were being relocated at the time that the poles prior to the subdivision location and after the subdivision location were also being relocated to a single alignment; provided however, that the County Commission may waive the bond requirement, upon favorable recommendation of the County Engineer, if the County Commission finds that it is improbable that the poles will need to be relocated in the near future; and
 - 5) The developer and the owner of the property have executed a Restrictive Covenant and Lien Agreement, in a form acceptable to the County, agreeing to indemnify and hold the County and its agents, officials, and employees harmless from any claim or liability related to or arising out of, directly or indirectly, the failure to relocate the poles, including defense costs and attorney's fees, and further agreeing to relocate the poles, at developer's and owner's sole expense, to the lot line upon the earliest to occur of (i) sixty (60) days from the date of written demand by the County to relocate the poles, (ii) the date established by the County Commission for completion of the relocation, and (iii) ten (10) years from the date of the approval of the development by the County Commission, unless a further extension of time is subsequently approved by the County Commission, which Restrictive Covenant and Lien Agreement shall run with the land, shall be recorded in the records of the County Recorder, and shall be secured by a first position Trust Deed on the subdivision lots with the developer providing to Utah County a Lender's Extended Policy of Title Insurance in an amount not less than the fair market value of the lots. The Restrictive Covenant and Lien Agreement shall preclude any human occupancy of the development property if the poles are not timely relocated.

- c. An extension of time for construction of required improvements (including the relocation of existing utility poles) may be granted by the County Commission upon application by the developer and good cause shown. Any request for an extension shall be in writing, shall be accompanied with a processing fee in such sum as determined by the County Engineer to cover the costs associated with the review and processing of the request for extension, but not less than the minimum processing fee of \$100.00, and shall be supported by a then current estimate prepared and signed by the Developer's engineer, or the applicable utility company, which describes the improvements which remain to be constructed, and the estimated cost to construct the remaining improvements. The request shall be supported by such other documentation as the County Engineer deems necessary. If an extension of time is granted, the County Commission shall require that the bond amount be increased to reflect the increased cost of the remaining improvements; provided however, that the County Commission may waive the bond requirement for the relocation of existing utility poles, upon favorable recommendation of the County Engineer, if the County Commission finds that it is improbable that the poles will need to be relocated in the near future.

21. Construction to be in Accordance with Plats, Plans and Documents

All large scale developments shall be constructed in accordance with the approved final plats, plans, and documents, and all final plats, plans, and documents shall be binding on the developer, its successors, grantees, and assigns and shall limit the use of the land and structures in the development as set forth in the approved plans and the recorded plats, and documents. In the event that the developer or its successors, grantees, or assigns performs construction or uses the land in a way which is not in accordance with approved final plats, plans or documents, or fails to perform according to the agreements or covenants required by chapter 6 of this land use ordinance for plat approval, compliance may be obtained through the use of the funds of the improvement bond and warranty bond, and /or through legal action.

22. Plan and Documents to be Recorded

The Zoning Administrator shall verify that the developer has recorded the plat and documents with the County Recorder in the form in which such were approved. No lot or building (or interest therein) shall be sold, no building permit shall be issued, and no occupancy permits shall be issued for any buildings within a large scale development until the final plans and documents have been approved and recorded as set forth in this ordinance.

23. Warranty Bond

- a. As an assurance that the developer shall warrant the improvements for the warranty period, the developer shall deposit with the County a cash warranty bond in an amount equal to 10% of the lesser of (i) the original estimated cost of completion of the required improvements, as determined by the County Engineer, and (ii) developer's reasonable proven cost of completion of the required improvements.
- b. The developer shall be responsible for the installation of all required improvements and for the quality of all labor, materials, and workmanship used therein. Upon

completion of the improvements, the developer shall submit a written request to the County Engineer to make an inspection of the improvements. After the inspection of the improvement, the County Engineer shall submit a report to the County Commission, setting forth the condition of the improvements. If all improvements have been constructed in strict conformance with the approved plans and Utah County development standards, and to a quality and standard not less than generally accepted construction standards, no liens have been filed, all costs of labor and materials have been paid, lien releases have been provided and all other requirements have been satisfactorily completed, the County Commission shall formally accept the improvements and authorize the commencement of the warranty period, which warranty period shall be for one year after final acceptance of the improvement or warranty work; or two years after final acceptance of the improvement or warranty work, if the County:

- 1) determines for good cause that a one year period would be inadequate to protect the public health, safety, and welfare; and
- 2) the County has substantial evidence on record, of:
 - i. prior poor performance by the developer; or
 - ii. that the area upon which the infrastructure will be constructed contains soil that has (i) a high susceptibility for volumetric change, typically clay rich, having more than a 3% swell potential; (ii) bedrock units with high shrink or swell susceptibility; or (iii) gypsiferous silt and clay, gypsum, or bedrock units containing abundant gypsum commonly associated with dissolution and collapse features; and the County has not otherwise required the developer to mitigate the suspect soil.
- c. Developer shall repair, within sixty days from the date of written notice by the County to the Developer, any defects, normal wear and tear excepted, which, in the opinion of the County Engineer, have developed in the improvements during the warranty period.

24. Partial Release of Construction Bond

Partial releases of the construction bond may be made when a portion of the required improvements have been satisfactorily installed, but only if the amount of the bond which is retained is equal to or greater than one-hundred twenty five percent (125%) of the cost of installing the uncompleted improvements. Any request for a partial release shall be in writing, shall be accompanied with a processing fee in such sum as determined by the County Engineer to cover the costs associated with the review and processing of the request for partial release, but not less than the minimum processing fee of \$100.00, and shall be supported by an estimate prepared and signed by the developer's engineer which describes the improvements which have been constructed, the cost to construct the improvements which have been completed, and the estimated cost to construct the remaining improvements. The request shall be supported by actual invoices for materials and installation costs, together with such other documentation as the County Engineer deems necessary. Submission of invoices by developer shall constitute an express warranty by developer to County that the items described on the invoices have been completely installed on the project and will not be removed by the developer (materials delivered to the site but not installed shall not be included). Any

such partial release shall be made after inspection by the County Engineer, and authorization by the County Commission. If at the end of the one-year construction period, the required improvements are not complete, or if the improvements at the end of the warranty period show defects, unusual depreciation, do not comply with the applicable standards, or if any outstanding costs or liens are not paid, Utah County may send a notice of default and take action to collect the bonds and/or action against the developer to remedy the deficiency.

25. Continuing Obligation

It shall be the obligation and duty of the developer and its successors and assigns to carry out the conditions made applicable to the development. In case of failure or neglect to comply with any and all of the conditions and regulations as herein established, and as made applicable to a specific large scale development, the Zoning Administrator shall not issue a certificate of zoning compliance for the development. Such failure or neglect to comply with the requirements or to maintain the buildings and premises in accordance with the conditions of approval of the plans and documents shall also be deemed to be a violation of this ordinance.

26. Amendments to Large Scale Development Plats

a. Unrecorded Plats

If the applicant desires to make changes to an unrecorded large scale development plat that has received a recommendation from the Utah County Planning Commission and/or approval by the Utah County Commission, the applicant must file a new application which complies with the procedures and requirements for a new application, and which application must contain all of the elements required for a new application, provided, however, that the Community Development Director can waive any procedures or application elements which the Community Development Director determines to be inapplicable to the amended application, or contained in the original application and not requiring amendment or a new submission. The application must then be submitted to the Planning Commission for a new recommendation and to the Utah County Commission for approval or denial.

b. Recorded Conforming Plats

Amendments to approved recorded plats of large scale developments which are not nonconforming uses under this Land Use Ordinance shall comply with the procedures and requirements contained in the Utah Code for plat amendments. In addition, the applicant shall comply with the procedures and requirements for a new large scale development application, and which application must contain all of the elements required for a new application, provided, however, that the Community Development Director can waive any procedures or application elements which the Community Development Director determines to be inapplicable to the plat amendment application, except for those procedures and requirements contained in the Utah Code for plat amendments. The application must then be submitted to the Planning Commission for a recommendation and to the Utah County Commission for approval or denial.

c. Recorded Nonconforming Plats

Amendments to approved recorded plats of subdivisions and large scale developments which are nonconforming uses (plats approved as previously permitted conditional uses under the land use ordinance, but, because of one or more subsequent land use ordinance changes, do not conform to the regulations that now govern the use of the land) shall comply with the procedure and requirements contained in the Utah Code for plat amendments. In addition, the applicant shall comply with the procedures and requirements applicable to the specific development type which was originally approved (now a nonconforming use). Any amendment must comply with all of the parameters, requirements, and restrictions applicable to the original approved development. No such plat amendment can be approved which would increase the number of dwelling units in the plat, increase the number of lots in the plat, increase the number of lots available for residential use in the plat, or add additional land to the plat. Consistent with the limitations contained herein, the Community Development Director can waive any procedures which the Community Development Director determines to be inapplicable to the plat amendment application, except for those procedures and requirements contained in the Utah Code for plat amendments. The application must then be submitted to the Planning Commission for a recommendation and to the Utah County Commission for approval or denial.

27. Building Permits

No building permit shall be issued until the plat is recorded. After the plat is recorded, no building permit shall be issued for any structure within the development, other than utility related structures, until (i) all of the roads, streets, street signs, traffic control signs and devices, and information signs, have been constructed, inspected, and approved; (ii) the central culinary water system, if one is proposed or required for the development, is constructed, inspected, approved and is operational, including the issuance of all required operational permits from the State of Utah and other entities having jurisdiction; (iii) the private culinary well, if one is proposed or required for the lot, has been drilled, tested, and approved as a culinary water source, meeting all applicable requirements for use, flow, quantity, and quality; (iv) the central sewer system, if one is proposed or required for the development, is constructed, inspected, approved and is operational, including the issuance of all required operational permits from the State of Utah and other entities having jurisdiction; and (v) all other required utility systems have been constructed, inspected, approved and are operational, including the issuance of all required operational permits from the State of Utah and other entities having jurisdiction, provided that if the sewer treatment method is by private septic systems entirely located on each lot, the permit for the construction of the dwelling may be issued concurrent with the issuance of the required permits for construction of the private septic system serving that dwelling.

Part II:

A copy of the Utah County Land Use Ordinance, as amended herein, is hereby ordered to be filed in the office of the Utah County Clerk/Auditor.

Part III:

If any of the sections, sentences, clauses or provisions of this ordinance shall for any reason be adjudged inapplicable or invalid by a court of competent jurisdiction, such shall not affect or invalidate the remaining portion contained herein.

Part IV:

This ordinance shall become effective fifteen (15) days after it is passed and upon at least one (1) publication in a newspaper published in and having general circulation in Utah County.

PASSED and ordered published this 30th day of July 2013.

UTAH COUNTY COMMISSION

VOTE



DOUG WITNEY, CHAIR

aye



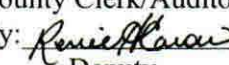
GARY J. ANDERSON, COMMISSIONER

aye



LARRY A. ELLERTSON, COMMISSIONER

aye

ATTEST:
BRYAN E. THOMPSON
County Clerk/Auditor
By: 
Deputy



APPROVED AS TO FORM:
TIMOTHY L. TAYLOR
County Attorney
 Approved

Disapproved

By: 
Deputy

Date of Publication: Once only, as soon as possible

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CUSTOMER NAME AND ADDRESS	ACCOUNT NUMBER	DATE
UTAH COUNTY AUDITOR, KENT MONSON KENT MONSON 100 E CENTER ST STE 3600 PROVO UT 84606	9001334912	8/14/2013

ACCOUNT NAME	
UTAH COUNTY AUDITOR,	
TELEPHONE	ADORDER# / INVOICE NUMBER
8018518238	0000899635 /
SCHEDULE	
Start 08/14/2013	End 08/14/2013
CUST. REF. NO.	
Ord No. 2013-9	
CAPTION	
NOTICE OF ORDINANCE ORDINANCE NO. 2013-9 WAS ADOPTED BY THE BOARD OF CC	
SIZE	
27 Lines	1.00 COLUMN
TIMES	RATE
3	
MISC. CHARGES	AD CHARGES
TOTAL COST	
33.35	

NOTICE OF ORDINANCE
 ORDINANCE NO. 2013-9
 WAS ADOPTED BY THE BOARD
 OF COUNTY COMMISSIONERS
 OF UTAH COUNTY, UTAH, ON
 JULY 30, 2013, AMENDING
 CHAPTER 6, LARGE SCALE DE-
 VELOPMENTS, SECTION 6-1,
 GENERAL PROVISIONS, SUB-
 SECTIONS 6-3-E-17
 THROUGH 27, DEALING WITH
 IMPROVEMENTS AND BOND-
 ING FOR LARGE SCALE DEVEL-
 OPMENTS.
 A COMPLETE COPY OF THE
 ORDINANCE IS AVAILABLE AT
 THE COUNTY CLERK
 /AUDITOR'S OFFICE, COM-
 MISSIONER DOUG WITNEY,
 COMMISSIONER GARY J. AN-
 DERSON, AND COMMISSIONER
 LARRY A. ELLERTSON VOTED
 IN FAVOR OF THE ORDI-
 NANCE.
 899635 UPAXLP

AFFIDAVIT OF PUBLICATION

AS NEWSPAPER AGENCY COMPANY, LLC dba MEDIAONE OF UTAH LEGAL BOOKER, I CERTIFY THAT THE ATTACHED ADVERTISEMENT OF **NOTICE OF ORDINANCE ORDINANCE NO. 2013-9 WAS ADOPTED BY THE BOARD OF COUNTY COMMISSIONERS OF UTAH COUNTY, UTAH, ON JULY 30, 2013, AMENDING CHAPTER 6, LARGE SCA** FOR **UTAH COUNTY AUDITOR**, WAS PUBLISHED BY THE NEWSPAPER AGENCY COMPANY, LLC dba MEDIAONE OF UTAH, AGENT FOR THE SALT LAKE TRIBUNE AND DESERET NEWS, DAILY NEWSPAPERS PRINTED IN THE ENGLISH LANGUAGE WITH GENERAL CIRCULATION IN UTAH, AND PUBLISHED IN SALT LAKE CITY, SALT LAKE COUNTY IN THE STATE OF UTAH. NOTICE IS ALSO POSTED ON UTAHLEGALS.COM ON THE SAME DAY AS THE FIRST NEWSPAPER PUBLICATION DATE AND REMAINS ON UTAHLEGALS.COM INDEFINATELY.

PUBLISHED ON Start 08/14/2013 End 08/14/2013

SIGNATURE *Kent Monson*

8/14/2013



VIRGINIA CRAFT
 Notary Public, State of Utah
 Commission #581469
 Commission Expires
 January 12, 2014

Virginia Craft

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