

**ZONING ORDINANCE**  
**for**  
**EMERY COUNTY, UTAH**

As amended - Current through June15, 2004

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**ARTICLE I**  
**TITLE, PURPOSE, DECLARATION INTENT**

**1-1 TITLE**

This Ordinance is entitled and may be referred to as “THE EMERY COUNTY ZONING ORDINANCE.”

**1-2 PURPOSE**

The zones, boundaries, and regulations herein are designed and intended to carry out the policies set forth in the Emery County General Plan, by:

- (a) Promoting the health, morals, convenience, order, prosperity, and general welfare of the inhabitants of Emery County.
- (b) Channeling growth and development to those areas where they can be most effectively and economically accommodated.
- (c) Promoting the safety of Emery County’s inhabitants and their property.
- (e) Promoting economy and efficiency in the delivery of municipal services to all county residents, whether by service districts, or by county, city or town government.
- (f) Relieving and preventing traffic congestion on highways, streets and roads within the county and promoting economy in road building.
- (g) Fostering those agricultural and industrial activities which will develop and add value to the county’s abundant natural resources and provide well-paying employment for its citizens.
- (h) Stabilizing, improving and protecting private and public property values and the county’s tax base.
- (i) Promoting the viewing and enjoyment of Emery County’s landscapes and natural beauty from its roads and highways.
- (j) Fostering and protecting the rural lifestyle enjoyed by its citizens, preserving open spaces where they exist, and discouraging urban sprawl.
- (k) Regulating activities and uses, whether on private or public land, for the protection of the public; the orderly development of business, industry agriculture and home building; the beneficial use of the county’s resources; and compliance with the laws of the State of Utah and of the United States of America.
- (l) Balancing the public interest with the rights and freedoms of its citizens, particularly with respect to their private property.

**1-3 POLICY STATEMENTS**

- 1-3-1** In establishing the several zones designated herein, their boundaries and the regulations applicable therein, due and careful consideration has been

given, to the suitability of land for particular uses; to accomplishment of the purposes outlined in the preceding section; and to the needs and desires of the cities and towns and other entities affected thereby. It is the intent of the Emery County Commission that the regulations and restrictions set forth in this Ordinance shall be so interpreted and construed as to further those stated purposes and the specific objectives and characteristics of the respective zones. It is likewise the intent and policy of the Emery County Commission that the regulations and restrictions set forth in this Ordinance shall be so interpreted and construed as to further those stated purposes and the specific objectives and characteristics of the respective zones.

**1-3-2** Although the provisions of this Ordinance are founded generally upon the authority granted by Title 17, Chapter 27 of the Utah Code Annotated, independent authority for many of these regulations is claimed, based upon the County's mandate and power to pass and enforce Ordinances "necessary and proper to provide for the safety, and preserve the health, promote the prosperity, improve the morals, peace and good order, comfort and convenience of the County and the inhabitants thereof, and for the protection of property therein" insofar as particular provisions are not pre-empted by State or Federal law.

**1-3-3** While the regulations found in this Ordinance are necessary for the safe and orderly growth of Emery County and to ensure peace and harmony among its citizens, care has been taken in crafting them to weigh public interests against private personal and property rights and to limit their impacts upon such rights. In administering and implementing this Ordinance, county officers and functionaries must necessarily exercise discretion and judgment, within the limits, standards and requirements found in this Ordinance. It is intended that the administrative and quasi-judicial powers granted herein be used with restraint and careful consideration of competing legitimate public and private interests, as well as the policies established by the said General Plan and the purposes set forth in Part 1-2, above.

**1-3-4** More than ninety percent of the lands in Emery County are owned and administered by the United States and the State of Utah. The County recognizes trends in national and state affairs which may limit its powers over these lands and the access of its citizens to them. The County, representing the interests and desires of its people, has established a Public Lands Council to facilitate discussion and cooperation among the

various governmental agencies, industries and other groups interested in the future of these public lands and resources. In furtherance of its role in these ongoing discussions, it is the intent of the Emery County Commission that the regulations in this Ordinance be applied on public, as well as private, lands to the fullest extent permitted by law, and that any part hereof declared to be invalid by a court of competent jurisdiction as to a particular owner, agency, activity or use be severable from the remaining parts or applications of the Ordinance, which shall remain in force.

**1-4 INTERPRETATION AND INTENT**

It is the intent of the Board of County Commissioners of Emery County that the regulations and restrictions as set forth in this Ordinance shall be so interpreted and construed to further the purposes of the Ordinance and the objectives and characteristics of the respective zones.

**1-5 CONFLICTS**

This Ordinance shall not nullify more restrictive provisions of other applicable covenants, agreements, ordinances, or laws. The more restrictive language shall apply.

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## **ARTICLE II DEFINITIONS**

For the purpose of this Ordinance, certain words and terms are defined as follows:

Words in the present tense include the future and the future includes the present; the singular number includes the plural and the plural the singular; the word “lot” includes the word “plat”, “tract”, or “parcel of land”, as the tense may require it; the term “erected” means “constructed”, “altered”, “moved”, or “repaired”; the words shall and must are always mandatory. The word “may” is permissive. Words not included herein, but which are defined in the Building Codes shall be construed as defined therein.

**Accessory Building** - A detached subordinate building, the use of which is appropriate, subordinate, and customarily incidental to that of the main building, or to the main use of the land, and which is located on the same lot or parcel of land with the main building or use.

**Agriculture** - any activity in which the earth is cultivated, crops and pastures are grown and/or livestock are bred, kept or raised. The term is meant to apply to such activities on a scale beyond that which is customary within incorporated areas, as opposed, for example, to gardening or the keeping of pets. No distinction is made between agriculture for profit, subsistence or personal enjoyment and satisfaction, although certain intensive agricultural activities are not included.

**Airport** - A tract of land or water that is maintained for the landing and takeoff of aircraft and for the receiving and discharging passengers and cargo. Airports usually have facilities for the shelter, supply and repair of aircraft.

**Airport Approach Zone** - An area at each end of an airport land strip or take-off strip, broadening from a width of one thousand (1,000) feet at the end of the strip to a width of four thousand (4,000) feet at a distance of seven thousand five hundred (7,500) feet from the end of such strip, its center line being a continuation of the center line of the strip.

**Airport Transition Zone** - A triangular area adjacent to each side of an airport approach zone located with reference thereto as follows: One corner of said transition zone shall be identical with the corner of the approach zone nearest to the landing strip; a second corner shall be located at the end of a line, said line extending from the end of the landing strip to a point one thousand five hundred fifty (1,550) feet from the center line of said landing strip and at right angles thereto; a third corner shall be located at a point along said approach zone boundary line, which point is seven thousand five hundred (7,500) feet distance from the first corner above mentioned.

**Airport Turning Zone** - A circular area surrounding an airport encompassing all of the land lying within a radius of two (2) miles distance from the landing strip of an airport,

except that area covered by the airport, the transition zones and the approach zones. (Res. 11-12-79)

**Buildable Area** - A portion of a lot which is free of any physical or legal constraint which would render it unacceptable or ineligible as a location for the placement of a dwelling (i.e. pre-existing easement, steep slope, inadequate soils for septic tank or foundation purposes, wetland or flood hazard.) (Res. 10-3-84A).

**Building** - Any structure having a roof supported by columns or walls, built for the support, shelter, or enclosure of persons, animals, chattels, or property of any kind.

**Campground** - An area of land on which accommodations for temporary occupation are located or may be placed not to exceed one (1) month. This includes, but is not limited to tents and recreational vehicles.

**Chair** - The chairman, chairwoman or chairperson of a board or commission mentioned herein, including any acting or duly authorized substitute chairman, chairwoman, or chairperson.

**Commercial Timber Harvest** - the cutting and removal of standing timber, alive or dead, for sale or under contract of sale with the owner of the property from which such timber is harvested, not including cutting of timber by the property owner for such owner's personal use, cutting of trees for sale as Christmas trees or for posts or poles, nor cutting or removal of trees or dead wood for firewood.

**Conditional Use** - Means a land use that, because of its unique characteristics or potential impact on the county, surrounding neighbors, or adjacent land uses, may not be compatible in some areas or may be compatible only if certain conditions are required that mitigate or eliminate the detrimental impacts.

**Conditional Use Permit** – A document issued in accordance with this Ordinance which grants permission for a particular conditional use and states the terms and conditions upon which such permission is granted.

**Construction Code** – Any code, or part thereof, which sets standards for building, electrical wiring, plumbing and mechanical installations, etc. and has been adopted by the State of Utah or by Emery County.

#### **Construction Type**

- **Conventional (“Stick built”)** - A dwelling which is constructed in compliance with the provisions of the Building, Mechanical, Electric and Plumbing Codes adopted by the State of Utah.
- **Factory-built-housing Set-up Contractor** - An individual licensed by the Utah Division of Occupational and Professional Licensing to set up or install manufactured comes on a temporary or permanent basis, including:
  - (a) The placement and or securing of a Manufactured Home on a permanent or temporary foundation,

- (b) Securing the units together if required, and
- (c) Connection of the utilities to the Manufactured Home.

The license does not include site preparation, construction of a permanent foundation, and construction of utility services to the near proximity of the Manufactured Home. Dealers not licensed as Factory-built-housing Set-up Contractors must subcontract the connection services to individuals who are so licensed under the Utah Construction Trades Licensing Act.

- **HUD Code** - The Federal manufactured Housing Construction and Safety Standards Act of 1974. (See also Code of Federal Regulations Part 3280)
- **Installation Standard** - Manufactured homes must be installed in accordance with one of the following:
  - (a) The standard adopted and published by the National Conference of States on Building Codes and Standards titled “NCSBCS/ANSI A225.1 - 1994 for Manufactured Home Installations”;
  - (b) The accompanying manufacturer’s instruction manual; or
  - (c) Any equivalent standard adopted by the State of Utah.
- **Manufactured Home** - A transportable housing unit constructed on or after June 15, 1976, according to the HUD Code, in one or more sections, which, in the traveling mode, is eight body feet or more in width or 40 body feet or more in length, or when erected on site, is 400 or more square feet, and which is built on a permanent chassis with removable axles and wheels and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems.
- **Mobile Home** - A transportable factory-built housing unit built prior to June 15, 1976.
- **Modular Unit** - A structure for human habitation, occupancy or use assembled at the building site from manufactured sections or modules which meet the construction standards for conventional construction, specifically those adopted by the Utah Uniform Building Code Commission pursuant to Utah Code Section 58-56-4.

**Critical Angle of Repose** - The angle of slope for a given material at which no more material can be added without creating a slide; the maximum angle from horizontal at which a given material will rest on a given surface without sliding or rolling.

**Designated County Road** - A Federal, State, or Class B and C county road, which road has been designated on the Official Map of Emery County, for public use and access.

**Disability** - any physical or mental impairment that substantially limits one or more of a person's major life activities, including a person having a record of such an impairment or being regarded as having such an impairment. "Disability" does not include current



illegal use of, or addiction to, any substance which has been designated by the United States Government or the State of Utah as controlled substance.

**Dwelling Unit, One family** - a building designed as a unit for occupancy by only one family for living, eating and sleeping purposes. A One-Family Dwelling Unit is all that is allowed on a single building lot unless specifically allowed otherwise. A One Family Dwelling Unit does not including hotels, tourist cabins, and boarding houses.

**Dwelling, Farm**

- **Labor** - One or more dwelling units constructed and maintained as a unit by a farmer or a non profit corporation, and which are occupied exclusively by an individual or family, whose primary source of income is derived from doing farm work.
- **Primary Caretaker** - A conventional one-family dwelling which is located on a Bona Fide farm unit as determined in accordance with the criteria and procedures of this Ordinance, and which is occupied by the owner, manager, or employee of said farm unit. (Res. 11-16-78).
- **Secondary Caretaker** - A supplementary dwelling which is located on the same designated farm unit as the primary farm caretaker dwelling and is occupied by a person or family whose primary source of income is derived from the operation of a farm on which the secondary farm dwelling is located. (Res. 11-16-78).

**Dwelling, Caretaker (Non-Farm)** - A conventional one-family dwelling which is occupied by a person, persons, or family whose function it is to watch or take care of a business, industry, or livestock operation, which is located on the same lot or tract of land as the building. (Res. 2-1-78).

**Elderly Person (or the Elderly)** - any person or persons who are 60 years old or older, who desire or need to live with other Elderly Persons in a group setting, but who are capable of living independently.

**Family** - An individual or two (2) or more persons related by blood, marriage, or adoption living together in a dwelling unit. Guests in excess of two (2) who pay for meals or room shall be considered as boarders.

**Farm, Ranch** - any enterprise or tract of land in which the primary activity is agriculture. Factors in determining whether a particular property constitutes a farm or ranch are size, eligibility for "Green Belt" classification for tax purposes, numbers of animals, regular sales of animals or crops, etc., with the primary consideration being whether the land is being put to productive use. The determination of whether a particular use constitutes a farm or not shall be made by the Zoning Administrator, who may, however, refer the matter to the Countywide Planning Commission, subject to appeal. The term includes orchards, tree farms, turf farms, or other designations if the primary activity on the site falls within this definition, and includes all activities and structures generally and

traditionally associated with agriculture. *(Added 6-2004)*

**Gas and Oil Wells** - Any operation utilizing equipment which advances a bore hole into strata for the purpose of discovery, development, and/or production of oil or gas.

**Grade (Ground Level)** - Grade is the lowest point of elevation of the finished surface of ground, paving or sidewalk within a five foot area from the building .

**Granting Authority** – The officer, board or commission authorized herein to grant permits under Article XI.

**Health, Board of** - The Health Department, Board of County Commissioners, or any representative authorized by the Board of County Commissioners to represent them in matters relating to health and sanitation.

**Height of Building** - The vertical distance from the grade to the square of the building at it's highest spot.

**Home Occupation (Business)** - An occupation for compensation conducted entirely within a residential dwelling.

**House, Boarding** - A building containing rooms in which meals are provided for compensation to more than two (2) persons, but which does not include provision for cooking in any guest room.

**Kitchen** - Any room used for or intended to be used for cooking and preparing food.

**Industrial Project** - All land and structures occupied by a manufacturing, processing, fabrication or similar industrial activity which, because of the nature of the activity, emits fumes, smoke, noise, vibration, dust, glare or odor in amounts which are discernable beyond the limits of the site. *(Res. 11-12-79)*.

**Lot of Record** - A parcel of land designed as a lot on a subdivision plat or described by metes and bounds which parcel is duly recorded as an independent tract or parcel on the plat records of the County Recorder, or a portion of a larger parcel of land being sold under a real estate contract for which a notice of interest has been filed in the office of the County Recorder indicating that said portion is in the process of being sold under contract. *(Res. 11-12-79)*

**Lot, Zoning** - A parcel of land which (1) complies with all applicable area, frontage, width, setback, access and supplementary requirements of the zone in which it is located, and (2) is shown as a separate lot in a subdivision plat or plan which plat or plan has been approved in accordance with applicable Ordinances, or is in a lot which is exempted from compliance with said Ordinances. *(Res. 2-1-78)*.

#### **Lot, type**

- **Corner** - A lot located at the junction of and fronting on two (2) or more intersecting streets.
- **Interior** - A lot which is not a corner lot, but which has frontage on a public street.

#### **Lot shape and sizing**

- **Front** - The boundary of a lot bordering on a street.
- **Setback** - The shortest distance between the property line and the building or part thereof.
- **Rear** - That boundary of the lot which is opposite and more or less parallel to the front of the lot.
- **Depth** - The horizontal distance between the front of the lot and the rear of the lot measured in the mean direction of the side lot lines.
- **Width (Frontage)** - The width of the lot or parcel of land measured at the front setback line.

**Major Underground and Surface Mine Developments** - Those activities conducted on the surface of the land for the development or extraction of mineral deposits from their natural occurrence together with the appurtenant on-site support buildings, structures, and areas for the following:

- (a) Coal mines regardless of size or surface area utilized.
- (b) Uranium mines disturbing a surface area of one acre or larger.
- (c) Any other mining operation disturbing or proposing to disturb a surface area of one acre or more or from which 500 tons or more of material are proposed to be removed during 12 consecutive months. (Res. 6-1-83 B).

**Major Utility Transmission or Railroad Project** - A construction project involving the installation of one or more of the following:

- (a) Electric power transmission lines having a capacity of more than 69kv together with any appurtenant substation and/or similar ancillary facilities.
- (b) Gas and oil transmission lines having a design pressure of 600 P.S.I. or more, or a pipe diameter of 8 inches or more together with any appurtenant pump stations and/or similar ancillary facilities.
- (c) Water transmission pipelines having a pipe diameter of 8 inches or more together with any appurtenant pump stations and/or similar ancillary facilities.
- (d) Conveyor belts, slurry lines, and related facilities (Permanent installation only).
- (e) Railroad tracks and appurtenant ancillary facilities. (Res. 6-1-83B)

**Map** - Any drawn or plotted document which depicts geographical information. With the advances in computer technology, such information is no longer restricted to a particular map, but is contained in databases created and accessed by Geographic Information Systems (GIS). Maps may be produced from the most current data contained in the official GIS database maintained by the Information Technology (IT) department of Emery County. See Section 9-2

**Minor Mine Development** - Any mine, quarry or similar excavation, except one qualifying as a sand or gravel pit, operated for the extraction of mineral deposits from their natural occurrence at levels less than established for qualification as a major

underground and surface mine development. (Res. 6-1-83B).

**Minor Utility Transmission Projects** - A project involving the construction of utility transmission and distribution lines and facilities for cable TV, telephone, microwave and electric power, gas, oil, and water at levels less than those established for major transmission projects. (Res. 11-12-79).

**Moved Buildings** - A structure or dwelling physically separated from its original foundation and moved to an additional property other than its original location.

**Municipal Landfill** - A facility for the disposal of household waste, commercial solid waste, and non-hazardous materials.

**Non-Conforming** - means a use of land that:

- (a) legally existed before its current zoning designation;
- (b) has been maintained continuously since the time the zoning regulation governing the land changed; and
- (c) because of subsequent zoning changes, does not conform with the zoning regulations that now govern the land.

**Nuisance** - Any activity or condition which annoys, injures, or endangers the comfort, repose, health, or safety of others by:

- (a) being unsightly, obnoxious or offensive to the senses;
- (b) offending public decency;
- (c) interfering with, obstructing or rendering dangerous for passage any lake, stream, canal, or basin, or any public park, square, street, right-of-way, or highway;
- (d) attracting and/or harboring extraordinary numbers of skunks, raccoons, rats, mice or other vermin;
- (e) creating excessive noise, foul odors, dust, toxic materials, effluents or other pollutants which escape from the premises; or
- (f) engendering or spreading disease or otherwise creating danger to the health, welfare, peace or safety of people, pets and livestock. (See also Public Nuisance)

**Off-street Parking** - An area adjoining a building providing for the parking of motor vehicles which does not include a public street, but has convenient access to it.

**On-Premise Occupation (Business)** - An occupation for compensation on a lot and/or within additional accessory buildings in addition to the residential dwelling situated on the same lot.

**Oil and Gas Operation** - Any structure, facility or activity which is constructed on or disturbs land in association with oil and gas drilling, production or waste water treatment and disposal, including but not necessarily limited to gathering and collector systems, compressors, wells, tanks, tank batteries, pits, associated power lines, access roads for

ingress and egress and pipelines.

**Permitted Use** – A land use which is designated herein as a permitted use within the zone in which it is located and is therefore allowed therein without a conditional use permit.

**Picnic Facility** – An area of land used for temporary day use picnicking and gatherings. (For overnight camping see Campgrounds)

**Planned Seasonal Development (Mountain Home Development )** - A development permitted as a conditional use in which the roads, travel easements, water lines, and open spaces are not dedicated to the public, but are retained as private facilities, and in which the dwellings or lots are designed to be occupied only during the months of April, May, June, July, August, September, and October.

**Plot Plan** - A plot plan should be drawn to scale, be easily readable and include at least the following: Measurement sufficient to be able to clearly identify the sizes and location of buildings, utilities, orientation on property, roads and parking areas, easements, drainages, storage areas. Standard drafting procedures such as size scale, north arrow, etc. will be required. In some cases an engineers stamp and number will required. The plot plan should be of a quality to be filed with the Emery County Recorder's Office. (Res 6-1-94C)

**Public Nuisance** – Any nuisance as defined herein which affects three or more persons. (Also see Nuisance)

**Ranch** - (See *Farm, Ranch* above)

**Recreation Vehicle** - A vehicle used, designed, or maintained primarily as a temporary dwelling for travel, vacation, or recreation purposes, having a width of not more than eight (8) feet and length of not more than forth (40) feet, and which can be driven or pulled upon the high ways without a special permit. (Res. 2-1-78).

**Residential Facility for Elderly Persons** - means a single-family or multiple-family dwelling unit that meets the requirements of Utah State Code Part 5 and any ordinance adopted under authority of that part. *Residential facility for elderly persons* does not include a health care facility as defined by Utah State Code Section 26-21-2.

**Residential Facility for Persons with a Disability** - a residence:

- (a) In which more than one person resides;
- (b) Is not a “health care facility” as defined by Utah Code Section 26-21-2; and
- (c) Is licensed or certified by the Department of Human Services of the State of Utah under Utah Code Title 62A, Chapter 2

**Sand and Gravel Pits** - Those activities conducted on the surface of the land for the extraction of sand, gravel, clay, fill material, and similar earth products. (Res. 6-1-83-B).

**Significant Sand and Gravel Operations** - A sand or gravel pit which:

- (a) Is situated on a parcel of land located 1,000 feet or less from an existing city boundary; or

- (b) Occupies or anticipates occupying an area of five (5) acres or more; or
- (c) Utilizes reciprocating screens, crushers, washers, dryers, or similar equipment for the processing of the extracted material. (Res. 6-1-83-B).

**Significant Expansion of an Existing Mine Development** - Any change in a mining operation which includes:

- (a) The relocation of a portal or extraction area from that shown on the approved site plan and/or
- (b) The relocation, enlargement, or addition of structures, storage areas, transportation facilities or similar appurtenant facilities which in the opinion of the Zoning Administrator or Planning Commission constitute a more than incidental amendment to the approved site plan, or
- (c) Any change in a minor mine development or sand or gravel pit which would have the effect of changing its classification to a major mine development or significant sand or gravel operation as applicable. (Res. 6-1-83B)

**Small Warehouse Facility** - A Warehouse which

- (a) does not exceed 3,000 square feet of storage;
- (b) does not create any objectionable noise, fumes, odors, dusts, or safety hazards, etc. that would not be in keeping with the zone it is in;
- (c) does not have any customer display area or customer onsite sales, service, delivery or pickup and has no more than two vehicles, at least one of does not exceed a one ton rating. (Res 6-1-94C)

**Structure** - Anything constructed or erected which requires location on the ground, but not including a tent or vehicle.

**Subdivision** - Any division of land which is a subdivision as the division or development of land whether by deed, metes and bounds description, devise and testacy, lease, map, plat, or other recorded instrument.

- (a) *Subdivision* does not include:
  - (1) a bona fide division or partition of agricultural land for agricultural purposes;
  - (2) a recorded agreement between owners of adjoining properties adjusting their mutual boundary if:
    - (i) no new lot is created; and
    - (ii) the adjustment does not result in a violation of applicable zoning ordinances;
    - (iii) a recorded document, executed by the owner of record, revising the legal description of more than one contiguous parcel of property into one legal description encompassing all such parcels of property; or

- (3) a bona fide division or partition of land in a county other than a first class county for the purpose of siting, on one or more of the resulting separate parcels, an unmanned facility appurtenant to a pipeline owned or operated by a gas corporation, interstate pipeline company, or intrastate pipeline company.
- (4) The joining of a subdivided parcel of property to another parcel of property that has not been subdivided does not constitute a "subdivision" under this Subsection (1)(t) as to the unsubdivided parcel of property or subject the unsubdivided parcel to the county's subdivision ordinance.

**Temporary Use** - A dwelling or structure placed on a lot or tract of land for a period not to exceed one year (non-permanent).

**Well, Exploratory** - A well, drilled for the purpose of determining the presence and/or extent of a mineral deposit, and including the appurtenant on-site equipment and facilities. (*Res. 10-3-84-A*).

**Well, Production** - A well, drilled for the purpose of recovering mineral deposits from their natural occurrence, and including the appurtenant on-site equipment and facilities necessary for the drilling and operation of the well and the recovery of the mineral. This definition shall not include water wells. (*Res.10-3-84-A*).

**Yard** - Any space on a lot other than a court, which is open and unobstructed from the ground to the sky by man-made structures

**Yard, Front of** - A yard extending across the full width of the lot, the depth of which is the minimum horizontal distance between the main building and the front of the lot.

**ARTICLE III  
COUNTY-WIDE PLANNING COMMISSION**

**3-1 DESIGNATION**

The planning, administrative and policy-making powers set forth in this Ordinance shall be vested in the Emery Countywide Planning Commission, subject to the approval of the County Commission, where indicated herein. Said Countywide Planning Commission is hereby designated as the Countywide Planning Commission for Emery County, under Section 17-27-201, Utah Code Annotated (1953), as amended. This County-wide Planning Commission shall operate in conformance with and be governed by the provisions of this Article, unless otherwise required by state law. References in this Ordinance to the "Planning Commission" are to be regarded as referring to the Countywide Planning Commission.

**3-2 MEMBERSHIP**

**3-2-1 Number of Members**

The County-wide Planning Commission for Emery County shall consist of nine (9) members: one designated by the Emery County Commission from among its own members, (hereinafter referred to as the "*ex officio* member,") and the remaining eight appointed by the County Commission from among residents of Emery County (hereinafter referred to as "Appointive Members").

**3-2-2 Other Public Offices**

At least five of such Appointive Members shall hold no other public office or position; provided, however, that employment with a public entity not involving policy making, administration, or elected office in such entity, shall not be considered a public office or position under this section.

**3-2-3 Non-partisan**

Appointive Members shall be selected without respect to political affiliation and shall serve without compensation, except for *per diem* compensation to be fixed by the County Commission, based on necessary and reasonable expenses and on meetings actually attended.

**3-3 TERMS OF OFFICE, VACANCIES**

**3-3-1 Terms of Office**

The term of office for the *ex officio* member shall correspond to his/her tenure of office as a County Commissioner. The terms of office of the Appointive Members shall be for four (4) years and until their respective successors have been appointed.

**3-3-2 Vacancies**

Vacancies occurring other than through the expiration of a member's term shall be filled by appointment by the County Commission.



**3-3-3 Unexcused Absences**

Appointive Members may be removed for unexcused failure to attend three (3) consecutive meetings of the County-wide Planning Commission or unexcused failure to attend five (5) or more meetings during a year. The County-wide Planning Commission Chair may excuse an absence of any appointive member for good cause, provided that:

- (a) Such action is taken on or before the next regularly scheduled meeting of the County-wide Planning Commission;
- (b) The excuse is stated, together with the reason given by the absent member, in the minutes;
- (c) The chair's findings and excuse of such an absence may be vacated by the vote of four of the members, both *ex officio* and appointive; and
- (d) No absence of an appointive member may be excused after action is instigated before the County Commission to remove such member under this section.

**3-3-4 Removal for Cause**

Appointive Members may also be removed for misconduct, which, for purposes of this Article shall consist of ethical violations under state law, conviction of a felony or other offense which would, in the opinion of the County Commission, bring discredit upon Emery County or the County-wide Planning Commission. A member accused of misconduct shall be entitled to a public hearing upon reasonable notice, to confront and question witnesses upon whose evidence such accusations are brought, to call witnesses to testify in such member's defense.

**3-4 ORGANIZATION, MEETINGS AND RECORDS**

The County-wide Planning Commission shall elect from its membership a Chairman and Vice-Chairman, whose terms shall be for one year, and shall maintain by-laws, not in conflict with county Ordinances or state law, to govern its proceedings and the transaction of its business. It shall also maintain a record of its proceedings, which shall be open to inspection by the public at all reasonable times.

**3-5 EMPLOYEES AND EXPENDITURES**

The County-wide Planning Commission may employ experts and a staff and pay such fees and expenses as may be deemed reasonable and necessary to exercise the powers conferred herein and to fulfill its duties as herein prescribed, provided that the annual total of such expenditures shall not exceed the amount appropriated by the County Commission.

**3-6 POWERS AND DUTIES OF THE COUNTY-WIDE PLANNING COMMISSION**

The County-wide Planning Commission shall:

- (a) Review and recommend changes in the General Plan to the County Commission as provided by state law and this Ordinance;
- (b) Prepare and recommend amendments to this Ordinance, including the provisions regarding subdivisions, as well as the number and descriptions of zone, zone boundaries, etc. adopted hereunder, to the County Commission, as provided by state law;
- (c) Administer provisions of this Ordinance, as provided herein and under state law;
- (d) Conduct regular reviews of land use and development in Emery County and report its findings to the County Commission, and advise the County Commission on such specific matters as the County Commission may request from time to time;
- (e) Hear or decide those matters designated herein or which the County Commission may designate by resolution of this Ordinance, including, among other things, approving or denying, or recommending approval or denial of, conditional use permits, subdivision plats, etc.;
- (f) Conduct investigations and studies, and prepare reports and recommendations concerning matters referred to it by the County Commission; and
- (g) Exercise any other powers that are either necessary for it to perform its functions pursuant to state law and this Ordinance, or delegated to it by the County Commission.

**3-7 ENTRY ONTO PRIVATE PROPERTY**

The County-wide Planning Commission or its authorized agents are authorized to enter upon any land within its jurisdiction, at reasonable times to make examinations and surveys. (See Appendix B)

**3-8 RECORDS**

The County-wide Planning Commission shall keep and maintain a current copy of the full text of this Ordinance, together with copies of all orders, resolutions, current maps and recommendations issued by said commission. It shall also maintain an archive of prior versions of this Ordinance and its predecessor, Resolution 1-70, sufficient to allow a determination of the county zoning law and regulations in effect at a particular time in the past, for purposes of determining the status of particular uses or properties.



**ARTICLE IV**  
**GENERAL PLAN: CONTENTS AND PROCEDURE FOR AMENDING**

**4-1 GENERAL PLAN REVIEW; FORMAT AND CONTENTS**

**4-1-1 Continued Review**

The County-wide Planning Commission is charged with the maintenance and review of the Emery County General Plan, and shall, as it deems necessary, recommend to the County Commission changes thereto. The General Plan shall comply with this section and Part 3 of Chapter 17-27 of the Utah Code Annotated.

**4-1-2 Contents**

The General Plan may include recommendations for incorporated areas if, in the County-wide Planning Commission's judgment, they are related to the planning of the unincorporated territory or of the county as a whole; provided, however, that such elements are not binding upon an affected municipality unless they are adopted by the municipal planning commission and the governing body of such municipality.

**4-1-3 Format**

The General Plan shall be prepared in documentary form, with accompanying maps, plats, charts and other descriptive or explanatory matter, and shall be organized in Elements, dealing with such matters as are set forth in this Article. Each such Element shall be presented in a format containing:

- (a) A statement of the history and current conditions in the County;
- (b) A statement of observed or anticipated trends, developments, problems, etc. which may affect the subject matter of that element;
- (c) A statement of County policy in reference to said subject matter; and
- (d) A statement of measures or actions to be undertaken by the County for implementing such policy.

**4-1-4 Elements**

The General Plan must include, but is not limited to, the following elements:

- (a) A land use element addressing the distribution, density and locations of residential, business, industrial, agricultural, recreational, educational, public, open, and other categories of public and private uses of land; identifying present uses, anticipated trends and problems, and making recommendations for standards, zoning, and other measures for regulating and directing land use patterns in the future;
- (b) A housing element in accordance with Section §17-27-307 of the Utah Code Annotated, addressing the availability of moderate income housing,

as defined in said Statute, as well as other housing needs, methods of encouraging such housing in the County, infrastructure and zoning requirements for increasing the availability thereof, goals and timetables for achieving same, and such other matters as may be required by law or pertinent to this subject;

- (c) A transportation element describing the location and capacity of existing highways, streets, roads, airports and other means of transportation; identifying new and improved transportation resources required by anticipated development in the county; and making recommendations for meeting such requirements;
- (d) An environmental element identifying the natural setting of the county, including scenic areas and vistas, air quality, forests, soils, rivers and other waters, fisheries, wildlife, minerals, and other natural resources; identifying potential threats to such resources and problems involved with development of such resources; and making recommendations for mitigating such problems, including measures to protect, conserve and enhance the environmental quality of the County, measures to regulate and direct the development and use of natural resources, reclamation of water, land, soils, wetlands, forests, etc. as directed and permitted by state and federal law;
- (e) A public services and facilities element describing current facilities, and their capacities, for sewage treatment, waste disposal, drainage; electric, gas, water, and communications utilities, together with the rights-of-way, easements, and facilities used by them; police and fire protection; ambulance and health care facilities; senior citizen centers and residential facilities; and other public services;
- (f) A rehabilitation, redevelopment, and conservation element identifying historic sites and resources; areas of current and future blight; recommending measures for preserving the County's heritage and for eliminating blight and undesirable development patterns;
- (g) An economic element addressing the current economic health of the County and identifying current and anticipated trends, and recommending an economic development plan for encouraging the types of economic development most desirable and congenial to the County's history and values and for regulating development so as to protect the heritage, values and lifestyles of the County;
- (h) A demographic element addressing population of the County, together with the distribution, ethnicity, history, religious and other traditions,

lifestyles and values of its inhabitants;

- (i) A government and taxation element addressing the types of governmental entities active within the county, including cities, towns, school districts, service and improvement districts, boards and councils, interlocal agreements, state and federal agencies, etc. and describing the tax base and other revenue sources available to the County, together with any special conditions or circumstances which may affect County policies and planning; and
- (j) An education element addressing the school systems in Emery County, resources for vocational and higher education currently available to its inhabitants, and future needs in terms of facilities and institutions.
- (k) A public lands element addressing issues involving public lands management and policies in Emery County.

**4-1-5 Other elements**

The General Plan may include other elements as may be designated by the County Commission as appropriate for inclusion in the plan.

**4-2 PROCEDURE FOR AMENDING GENERAL PLAN**

Additions or amendments to the General Plan or any major review thereof shall be developed with consideration for the elements and concerns identified in Part 3 of Chapter 17-27 of the Utah Code, and in accordance with the By-laws and Procedures adopted by the County-wide Planning Commission; provided, however, that all such changes must be first submitted to the public as follows:

**4-2-1 Notice**

After reasonable notice in the manner required by law of not less than fourteen (14) days, during which the proposed addition or amendment shall be made available for inspection in the office of the County Clerk, and such other places as it may designate, the County-wide Planning Commission shall conduct a public hearing to receive comments from the general public concerning the proposed addition or amendment.

**4-2-2 Planning Commission Review**

Following such hearing, the County-wide Planning Commission shall prepare a draft of the addition or amendment and submit the same to the County Commission with its recommendation for adoption of the same.

**4-2-3 County Commission Public Hearing**

Upon receipt of the draft addition or amendment, the County Commission shall set a date and time for a public hearing and shall give public notice thereof in the manner required by law not less than fourteen (14) days prior to the same, and shall make the draft available for inspection in the office of the County

Clerk, and such other places as it may designate during said period.

**4-2-4 County Commission Action**

After holding such public hearing and receiving comments from the public concerning the draft, the County Commission shall take one of the following actions:

- (a) Approve and adopt the same, whereupon it shall become part of, or replace, the existing General Plan;
- (b) Amend and then approve and adopt the same, as amended, whereupon it shall become part of, or replace, the existing General Plan; or
- (c) Reject and abandon the draft, or reject and remand it to the County-wide Planning Commission with further instructions.

**4-3 ONGOING REVIEW BY COUNTY-WIDE PLANNING COMMISSION**

The County-wide Planning Commission shall conduct an ongoing review of the General Plan and the matters addressed therein; and shall, from time to time as it shall deem necessary or upon request from the County Commission, report to the County Commission as to:

- (a) The progress, or lack thereof, made in implementing the general plan;
- (b) Developments bearing on the content, direction and/or adequacy of the plan; and
- (c) Recommendations for changes in the plan or for new planning initiatives.

**ARTICLE V  
GENERAL PROVISIONS**

**5-1 USES PROHIBITED IN ZONES UNLESS EXPRESSLY PERMITTED**

Uses of land which are not expressly permitted within a zone are hereby declared to be expressly prohibited therein. Neither the Planning Commission, Board of Adjustment nor the Zoning Administrator shall permit a use within a zone which is not expressly permitted by the terms of this Ordinance.

**5-2 NONCONFORMING BUILDINGS AND USES**

**5-2-1 Nonconforming Uses May Be Continued**

The owners of land and buildings which constitute a nonconforming use or structure, as defined in Article II, shall not be deprived of the use of such property for the purpose to which it was lawfully devoted at the time of the enactment of this Ordinance or an applicable amendment thereto, or at the time such use was legally commenced hereunder. Nonconforming buildings or structures or uses of land may be continued to the same extent and character as that which legally existed on the effective date of the applicable regulations. Repairs may also be made to a nonconforming building or to a building housing a nonconforming use. (*Ord. 7-15-98B*)

**5-2-2 Nonconforming Uses May Be Enlarged - Limitations**

5-2-2-1 Dwellings which are non-conforming uses may be upgraded or enlarged by replacement with manufactured housing, modular housing or dwellings of conventional construction, provided that such replacement meets all current, applicable building, plumbing, and electrical codes and does not increase the number of dwelling units in place. This provision shall not apply if the existing mobile home or non-conforming structure is not removed or destroyed. Non-conforming uses may not be enlarged by adding new structures or remodeling unless the entire structure is brought into conformance with existing construction codes.

5-2-2-2 Except as allowed by paragraph 5-2-2 1 above, nonconforming uses within a building may be expanded within the same building in which said nonconforming use is located only if:

- (a) No structural changes are made in the building.
- (b) Such increase or expansion is required to comply with an order to improve issued by a Health or Safety Official acting in his official capacity; and
- (c) The Board of Adjustment has approved such increase or



expansion. *(Ord. 7-15-98B)*

**5-2-3 Damaged Building May Be Restored**

A nonconforming building or structure and a building or structure occupied by a nonconforming use which is damaged or destroyed by fire, flood, or other calamity or act of nature may be restored, and the building or structure of use of such building, structure, or part thereof may be continued or resumed, provided that such restorations is started within a period of one year from the date of destruction and is diligently prosecuted to completion. Such restoration shall not increase the floor space devoted to the nonconforming use over that which existed at the time the building became nonconforming.*(Res. 11-12-79)*

**5-2-4 Discontinuance or Abandonment**

A nonconforming building or structure or portion thereof, or a lot occupied by a nonconforming use which is, or which hereafter becomes abandoned or discontinued for a continuous period of one year or more shall not thereafter be occupied, except by a use which conforms to the regulations of the zone in which it is located. *(Res. 11-12-79)*

**5-2-5 Change To A Conforming Use**

Any nonconforming building or use which has been changed to a conforming building or use shall not thereafter be changed back to a nonconforming use. *(Res. 11-12-79)*

**5-2-6 Change To Another Nonconforming Use Prohibited**

A nonconforming use of a building or lot shall not be changed to another nonconforming use whatsoever. Changes in use shall be made only to a conforming use. *(Res. 11-12-79)*

**5-2-7 Reclassification of Territory**

The provisions pertaining to nonconforming uses of land and buildings shall also apply to land and buildings which hereafter become nonconforming due to an amendment in this Ordinance or Map. *(Res. 11-12-79)*

**5-3 NON-CONFORMING LOTS OF RECORD**

Notwithstanding any other provision of this Ordinance, a one-family dwelling may be permitted on a nonconforming lot of record even though such lot fails to meet the area and/or width requirements of the zone in which it is located provided, that all access, setback, yard, sanitation, and other requirements of this Ordinance other than area or width, are met. *(Res. 11-12-79)*

**5-4 USES ON LEASED LANDS TO COMPLY WITH ORDINANCE**

Any person who may obtain State or Federal properties by purchase, lease, or other arrangement must utilize such properties in accordance with the provisions of this

Ordinance. *(Res. 11-12-79)*

**5-5 AMENDMENTS TO ORDINANCE AND MAP**

This Ordinance, including the Zoning Map, may be amended, but all proposed amendments shall be submitted first to the Planning Commission for its recommendations, which recommendations shall be submitted to the County Commission. *(Res. 11-12-79)*

**5-5-1 Written Petition Required**

Any person seeking an amendment of this Ordinance or the Zoning Database shall submit to the Planning Commission a written petition designating the change desired and the reasons therefore, and shall pay a filing fee in a amount as may be set by resolution of the County Commission.

**5-5-2 Intent With Respect To Amendments**

All amendments to this Ordinance shall be made in accordance with the General Plan. It is hereby declared to be public policy that this Ordinance shall not be amended unless it can be shown that changed or changing conditions make the proposed amendment reasonably necessary to the promotion of the purposes of said General Plan or this Ordinance. *(Res. 11-12-79)*

**5-5-3 Public Hearing Required Before Amending - Notice**

Amendments to this Ordinance may be adopted only after a public hearing in relation thereto before the County Commission, at which parties in interest and citizens shall have an opportunity to be heard. Notice of the time and place of such hearing shall be published in a newspaper of general circulation within the County at least fourteen (14) days prior to the date of the hearing.

**5-6 CONFLICTING PROVISIONS REPEALED - ILLEGAL USES PROHIBITED**

All Ordinances, resolutions, or parts thereof in conflict with the provisions of this Ordinance are hereby repealed insofar as they conflict with the provisions set forth in this Ordinance. Any building or use of land or any construction thereon which was not authorized by or under the pre-existing zoning Ordinance, as amended, or which is illegal under such Ordinance, shall remain unauthorized and illegal unless expressly authorized or permitted in the provisions of this Ordinance. *(Res. 11-12-79)*

**5-7 SEVERABILITY**

This Ordinance and the various parts, sections, and clauses, are hereby declared to be severable. If any part, section, paragraph, sentence, clause, or phrase is adjudged unconstitutional or invalid, it is hereby declared that the remainder of this Ordinance shall not be affected thereby. The County Commission hereby declare that it would

have passed this Ordinance and each part, section, paragraph, sentence, clause, and phrase thereof, irrespective of the fact that any one or more portions thereof be declared invalid.

*[End of page]*

**ARTICLE VI  
SUPPLEMENTARY REGULATIONS TO ZONES**

**6-1 EFFECT OF ARTICLE**

The regulations set forth in this Article, apply generally throughout the county unless otherwise provided in the provisions of this Ordinance pertaining to a particular zone. These regulations may be modified in specific cases where such modifications are expressly set forth in Conditional Use Permits issued pursuant to Article XI.

**6-2 SETBACKS DO NOT APPLY ACROSS LOT LINES**

The setbacks required by this Ordinance apply only to buildings on one lot and may not be applied to buildings on adjoining property.

**6-3 SALE OR LEASE OF REQUIRED SPACE**

No part of a zoning lot may be leased or conveyed to a new owner if the effect of such transaction would reduce the dimensions or area of the remaining property below the minimums required for a Zoning Lot in the Zone in which the property is located or cause the setback requirements in such Zone to be violated.

**6-4 EASEMENTS AND SETBACKS TO BE UNOBSTRUCTED**

Every part of a required utility easement shall be open to the sky and unobstructed. Required setbacks may contain shrubs, bushes and trees, subject to restrictions on visual obstruction, but shall be free of structures.

**6-5 CLEAR VIEW OF INTERSECTING STREETS**

In all zones which require a front setback, no obstruction to view in excess of two (2) feet in height shall be placed or allowed on any corner lot within a triangular area formed by the edges of the intersecting rights-of-way and a line connecting them at points forty-five (45) feet from the corner of the lot at which they intersect. Any sign or billboard shall be located at least one hundred (100) feet from the point of intersection of any two (2) intersecting streets or highways.

**6-6 PROHIBITED LIVING QUARTERS; EXCEPTIONS**

**6-6-1 Illegal Dwellings**

No building, tent, motor vehicle, trailer or other structure which does not meet current construction codes may be used as a dwelling, except as permitted under Article XI of this Ordinance.

**6-6-2 Mobile Homes Not Allowed, Exception**

Mobile Homes (see definition in Article II) are not allowed to be set up and used as permanent dwellings, but may be occupied as temporary dwellings as provided in Article XI. No mobile home may be used as an accessory building.  
*(See 6-14 below)*

**6-7 NUISANCES PROHIBITED**

No yard or other space shall be used for the storage of trash, debris, junk, obsolete vehicles or other material or objects which create a public nuisance; and no land shall be used for such purpose, except as specifically permitted herein. Persons desiring to store old vehicles for parts or restoration must do so in a manner which will not contaminate the soil and which will assure that they are not visible from the nearest road or highway and from dwellings in the neighborhood.

**6-8 SWIMMING POOLS**

Swimming pools not completely enclosed within a building shall comply with the same setbacks as would be required for a building and shall be completely surrounded by a fence or wall having a height of at least five (5) feet with no openings larger than thirty-six (36) square inches, except for gates. Gates shall be self-closing and self-latching and shall be kept locked at all times when there is no responsible adult present.

**6-9 ADDITIONAL HEIGHT ALLOWED FOR PUBLIC BUILDINGS**

Regardless of other regulations within the zone, public buildings and churches may be erected to any height provided the required setback is increased by one (1) foot for every five (5) feet in additional height above the maximum building height otherwise permitted in the zone

**6-10 SETBACKS FROM STATE AND FEDERAL HIGHWAYS**

All permanent structures on properties abutting upon highways having a State or Federal designation (except limited-access highways), shall be set back at least fifty (50) feet from the nearest highway right-of-way line.

**6-11 FENCES AND WALLS**

No sight-obscuring fence, wall, hedge or bush with a height of more than thirty-six (36) inches shall be placed along a front lot line or along a side lot line within the front setback within forty-five (45) feet from any intersection. The same limitation applies to lots with a driveway entering directly onto a highway with a speed limit greater than 30 miles per hour, unless such highway has at least 10 feet of shoulder.

**6-12 CONSERVATION OF VALUES - POLLUTION PREVENTION**

Any use, whether permitted or conditional, which emits or discharges particulate matter, gasses, fumes, or other pollutants in amounts which exceed the standards prescribed by Department of Environmental Quality, the Utah State Water Quality Board, the Southeastern Utah Health District, or which violates Federal Environmental Laws, may be enjoined by Emery County and any permit issued purporting to allow such use shall be suspended or revoked by the Countywide Planning Commission for so long as is necessary to resolve the problem or to determine the issue through court proceedings or hearings before regulatory agencies.

### **6-13 LOCATION OF BARNES**

Barns, corrals, pens, sties, coops, stables or other structures for the keeping of animals shall be located at least one hundred (100) feet from the nearest dwelling.

### **6-14 MANUFACTURED HOMES**

#### **6-14-1 Tax Clearances Required to Move**

No manufactured home or mobile home within Emery County shall be moved from its present location unless a tax clearance has been obtained from the county Assessor showing that all property taxes, including any interest and penalties, have been paid. Before any manufactured home may be set up in Emery County, the owner shall furnish the Zoning Administrator with a tax clearance from the county assessor of the county from which it was moved, or documentary proof that the home is newly constructed and has not been inhabited previously. Such tax clearance shall be displayed in a conspicuous place on the rear of the manufactured home or mobile home so as to be plainly visible while in transit. Transportation in violation of this Subsection is a violation of Utah law (Utah Code Section 59-2-309) and is subject to the penalty provisions of that section. In addition, any commercial mover who transports any manufactured home or mobile home without a valid tax clearance is guilty of a class B misdemeanor.

#### **6-14-2 Conditions for Zoning Clearance**

Manufactured homes are allowed in all situations where dwellings of conventional construction would be allowed under this Ordinance, provided:

- 6-14-2-1 The manufactured home must be permanently affixed to the property in accordance with State Law and attached to a permanent masonry foundation in accordance with plans providing for vertical loads, uplift, and lateral forces and frost protection in compliance with the applicable building code. All appendages, including carports, garages, storage buildings, additions, or alterations must be built in compliance with the building codes for conventional construction.
- 6-14-2-2 The manufactured home complies with all other applicable zoning, building code, and subdivision requirements, including any restrictive covenants, applicable to a single-family residence within that zone or area.
- 6-14-2-3 The manufactured home must meet current construction codes for manufactured homes. All manufactured homes (transportable housing constructed to comply with the HUD Code) are required to be identified by the manufacturer's data plate bearing the date the unit was manufactured and a HUD label attached to the exterior of

the home certifying the home was manufactured to HUD standards.

6-14-2-4 The manufactured home must be set up by a licensed Factory-built-housing Set-up contractor.

6-14-2-5 An affidavit of affixture of the manufactured home must be recorded in the office of the Emery County Recorder.

**6-15 ALL USES AND STRUCTURES TO BE LOCATED ON A ZONING LOT**

All uses and structures which are permitted within a zone shall be located on a parcel of land which qualifies as a zoning lot within that zone under Article X. No zoning lot shall contain more than the number of dwelling units allowed in such zone.

**6-16 EXPOSED SLOPES TO BE LESS THAN THE CRITICAL ANGLE OF REPOSE - EXPOSED AREAS TO BE RE-VEGETATED - EXCEPTION.**

No cut or fill slope that is created as a part of the constructing of any dwelling or other structure or any street, road, driveway, railroad, water, gas or electric transmission line, or similar travel or access way, whether publicly or privately owned, shall exceed the critical angle of repose except by special permission of the Countywide Planning Commission. Such permission shall not be given unless measures designed and certified by a licensed professional engineer are in place. Developers of any such project shall be responsible for re-establishing vegetative cover and of constructing any necessary erosion prevention works required as a result of the construction. Where terrain leading to the placement site of a transmission tower or similar structure will not permit the installation of such structure without the slopes of construction travel ways exceeding the critical angle of repose the County may require the use of air transport or other methods in lieu of such construction travel ways.

**6-17 SIGNS**

**6-17-1 Temporary Signs and Direction Signs**

The following are permitted uses and allowed in all zones, except where limited by restrictive covenants:

- (a) Name or address plates not exceeding 226 square inches; in area.
- (b) Temporary signs, such as political campaign signs and advertising for upcoming events within 90 days prior thereto and not to exceed 32 square feet per side.
- (c) Direction signs may be erected by governments, churches and civic groups within highway or road rights-of-way designating city limits; welcoming visitors and providing directions to sites of scenic, historical or general interest to travelers, historical sites, promoting civic programs or celebrations, etc. provided such signs are kept in

good repair and comply with state and federal regulations for signs along their highways.

**6-17-2 County Promotional Signs**

Billboards or signs promoting Emery County or giving directions to sites of interest may be erected by Emery County with the approval of the Emery County Commission. Billboards and signs may be erected by an incorporated city or town within the county upon the approval of the Countywide Planning Commission and the Emery County Commission. All such signs shall be maintained by the city or town or county agency which erected them.





## **ARTICLE VII ENFORCEMENT**

### **7-1 SCOPE**

The remedies, penalties, procedures, and other matters set forth in this chapter shall apply to any violation of the provisions of this Ordinance.

### **7-2 ZONING ADMINISTRATOR; DISTINGUISHED FROM BUILDING OFFICIAL**

The primary administrative and enforcement officer for the provisions of this Ordinance is the Zoning Administrator, who shall be appointed as necessary by the Board of County Commissioners. The Zoning Administrator is not the County Building Official and has different responsibilities and authority from that office, although both offices may be filled by one person, as the County Commission shall determine.

### **7-3 POWERS AND DUTIES OF ZONING ADMINISTRATOR**

#### **7-3-1 General**

The Zoning Administrator shall perform all of the duties and functions required by this Ordinance, and exercise all of the powers necessary to carry out those duties and functions.

#### **7-3-2 Office and Records**

The Zoning Administrator shall maintain an office, open during business hours, and shall maintain copies of all records and documents relating to actions taken under the authority of this Ordinance.

#### **7-3-3 Cooperation with County-wide Planning Commission**

The Zoning Administrator shall make such documents as may be pertinent to particular matters to the Countywide Planning Commission, the County Commission or the Board of Adjustment as the case may be, and shall obtain and keep on file the official minutes of meetings and hearings concerning Zoning matters.

#### **7-3-4 Referral of Matters to Other Agencies**

The Zoning Administrator shall also refer matters to the Health Department, Board of County Commissioners, and other agencies as required by this Ordinance.

#### **7-3-5 Not a Building Official**

The Zoning Administrator, as such, is not authorized to issue building permits.

#### **7-3-6 Investigating Violations**

The Zoning Administrator is authorized to investigate violations, with or without receiving complaints, of this Ordinance and to recommend enforcement actions to the Countywide Planning Commission and the Emery County Attorney. The Zoning Administrator is authorized to enter private property during the daytime for the purpose of conducting such investigations, and to call upon the Emery County Sheriff, or deputies thereof, for assistance.

#### **7-3-7 Right to Appeal on Behalf of County**

The zoning Administrator may appeal decisions of the Board of Adjustment to the District Court.

#### **7-3-8 Advisor and Assistant to County-wide Planning Commission**

The Zoning Administrator also serves as an advisor and assistant to the Countywide Planning Commission, informing it of developments which may require its attention, recommending changes to the Zoning GIS Databases relating to Zones and this Ordinance.

#### **7-4 ISSUANCE OF PERMITS**

Every official and employee of the county who is vested with the duty or authority to issue any permit shall conform to the provisions of this Ordinance and shall issue no permit, certificate, or license for a use, building, or purpose in conflict with the provisions of this Ordinance. Any permit, certificate, or license issued in conflict with the provisions of this Ordinance, intentionally or otherwise, or which issued upon a false statement of fact material to the issuance of the permit shall be void.

#### **7-5 ZONING CLEARANCES**

##### **7-5-1 Required as condition to Building Permits**

No building permit shall be granted for the construction, remodeling or moving of any structure without the issuance of a written zoning clearance, signed by the Zoning Administrator, certifying that the proposed construction is allowed under this Ordinance either as a permitted use in the Zone or under the authority of an existing Conditional Use Permit. A denial of zoning clearance shall be also in writing and signed by the Zoning Administrator and a copy thereof shall be delivered to the County Building Official.

##### **7-5-2 Applications**

Applications for zoning clearance shall be made in writing in a form designated by the Zoning Administrator, which may be combined with an application for a building permit in cooperation with the Building Official, and shall be accompanied by a legible sketch, diagram, or plat showing the size and location of the property involved and any existing structures and new structures to be erected and their position in relation to the property lines. Applications for zoning clearance for subdivisions shall be handled in accordance with Article XIII. Applications for zoning clearance of projects which appear to require Conditional Use Permits shall be treated as Application for Conditional Use Permits and handled in accordance with Article XI.

#### **7-6 TYPES OF VIOLATIONS**

It shall be unlawful for any person to violate any provision of this Ordinance, cause the violation of any provision of this Ordinance, or fail or refuse to do some act required under this Ordinance, including any of the acts set forth in this section.

##### **7-6-1 Utility Installation Unlawful Without Building Permit**

To install or allow to be installed, any sewer or water service lines, or any gas or electric utility connection to serve the premise which require a zoning clearance hereunder until one has been properly approved and issued by the Zoning Administrator.

##### **7-6-2 Transfer or Sale of Land Without Subdivision Approval**

To transfer or sell any land in a subdivision before a subdivision plat or record of survey has been approved and recorded. The description by metes and bounds in

an instrument of transfer or other documents used in the process of selling or transferring does not exempt the transaction from being a violation or from the penalties or remedies provided in this chapter.

**7-6-3 Development or Use Without Permit**

To engage in any development, use, construction, remodeling, or other activity of any nature upon the land and improvements thereon subject to the jurisdiction of the County without all of the required permits, approvals, certificates, and other forms of authorization required by this Ordinance or other County ordinance in order to conduct or engage in such activity.

**7-6-4 Development or Use Inconsistent with Permit**

To engage in any development, use, construction, remodeling, or other activity which is contrary to the terms and conditions of any permit, approval, certificate, or other form of authorization required to engage in such activity.

**7-6-5 Development or Use Inconsistent with Conditions of Approval**

To violate, by act or omission, any lawful term, condition, or qualification placed by the County council, planning commission, board of appeals or officer of the County, as applicable, upon a required permit, certificate, or other form of authorization granted by the County council, planning commission, board of appeals or other County officer allowing the use, development, or other activity upon land or improvements thereon.

**7-6-6 Development or Use Inconsistent with This Ordinance**

To erect, construct, reconstruct, remodel, alter, maintain, move, or use any building or structure, or to use any land in violation of this Ordinance.

**7-6-7 Making Lot or Setback Nonconforming**

To reduce or diminish any lot area so that setbacks or open spaces shall be smaller than prescribed by this Ordinance and any applicable final plat or plan.

**7-6-8 Increasing Intensity of Use**

To increase the intensity of use of any land or structure, except in accordance with the procedural and substantive requirements of this Ordinance.

**7-6-8 Removing, Defacing, or Obscuring Notice**

To remove, deface, obscure, or otherwise interfere with any notice required by this Ordinance.

**7-6-9 Continuing Violation**

To continue any of the above violations. Each day a violation occurs after a citation is issued shall constitute a separate offense.

**7-7 RESPONSIBILITY FOR VIOLATIONS**

It shall be the duty of all architects, contractors, and sub-contractors, builders, and other persons having to do with the establishment of any use of land, or the erection, altering, changing, or remodeling of any building or structure to make sure that a proper permit has been granted before work is begun on any project for which a permit is required. Any such architect, builder, contractor, or other person doing or performing any such work without a permit having been issued shall be deemed guilty of violation of this Ordinance in the same manner and to the same extent that the owner of the premises, or the person for whom the use is established, or for whom such buildings are erected or altered, and shall be subject to the penalties herein prescribed for violation.

## **7-8 NONCONFORMING USE AS AFFIRMATIVE DEFENSE**

It shall be an affirmative defense to the enforcement of the provisions of this Ordinance that the action complained of is a legally nonconforming lot or use, noncomplying structure, or other nonconformity as set forth in Section 5-2 of this Ordinance. The property owner shall have the burden of establishing that a nonconforming lot, structure, or use lawfully exists under this Ordinance.

## **7-9 ENFORCEMENT PROCEDURES**

### **7-9-1 Inspection of Buildings, Structures, and Land Uses**

The Zoning Administrator is authorized to inspect all buildings and structures in the course of construction, modification, or repair and to inspect land uses to determine compliance with the provisions of this Ordinance.

### **7-9-2 Interference with Enforcement Personnel**

It shall be unlawful for any person to interfere with lawful enforcement activities.

### **7-9-3 Investigation of Violations**

Whenever an apparent or alleged violation of this Ordinance shall come to the attention of the Zoning Administrator, the Administrator shall investigate the violation.

### **7-9-4 Notice**

In the case of violations not involving continuing construction or development, or any emergency situation, the Zoning Administrator shall give written notice of the nature of the violation to the owner of the land and to any person, known to the County, who is a party to any relevant permit, certificate, or approval. The persons receiving such notice shall have thirty (30) days to correct the violation before further enforcement action.

### **7-9-5 Immediate Enforcement**

- (1) If a violation appears to create an immediate danger to public health or safety, the Zoning Administrator may issue a citation to any person responsible for compliance, post a notice in a prominent place on the property stating the nature of the violation, and order that the owner or occupant and other parties on the site cease and desist from the illegal activity immediately.
- (2) In the case of a violation involving either continuing construction or development, or an emergency situation, as reasonably determined by the Zoning Administrator, the County may use the enforcement powers and remedies available to it under this chapter without prior notice. In such case, the Zoning Administrator shall send the notice to the same parties set forth in the subsection 7-9-4 above simultaneously with the beginning of enforcement action.

### **7-9-6 Other Enforcement**

In other cases, the Zoning Administrator shall attempt to resolve the issue informally with the responsible party, and, if unable to do so, shall refer the matter to the County Attorney for legal action.

## **7-10 ADMINISTRATIVE REMEDIES**

Any violation of the provisions of this Ordinance shall be subject to the enforcement remedies and penalties provided by this chapter and by Utah law, including any of the remedies set forth in this section.

#### **7-10-1 Withhold Permits**

The County may deny or withhold any permit, certificate, or other form of authorization pertaining to any land or improvements when an uncorrected violation exists on such land pursuant to this Ordinance or to a condition or qualification of a permit, certificate, approval or other authorization previously granted by the County Commission, Planning Commission, Board of Adjustment, or other County officer. The County may, instead of withholding or denying an authorization, grant such authorization subject to the condition that the violation be corrected. The provisions of this section shall apply regardless of whether the original applicant or current owner is responsible for the violation in question.

#### **7-10-2 Revoke Permits**

A permit may be revoked when the Zoning Administrator determines that actions taken thereunder do not conform to plans, specifications, or conditions of the permit; that the same was procured by false representation or was issued by mistake; or that any provision of this Ordinance is being violated.

- (a) Written notice of such revocation shall be served upon the owner, the owner's agent or contractor, or upon any person employed at the site of the building or structure for which such permit was issued, or shall be posted in a prominent location; and, thereafter, no such construction shall proceed.
- (b) Upon revocation of a building or other permit issued by mistake, the owner shall meet with the zoning administrator to determine the nature of the mistake.
  - (1) When plans are in conflict with an ordinance, resolution, regulation, or other applicable requirement, and when construction has not progressed to a stage where modification of the plans would require substantial alteration of the structures in place, the plans shall be modified to conform with applicable requirements.
  - (2) When construction has progressed to a stage where compliance would require substantial alteration of construction in place, the owner shall meet with the zoning administrator to negotiate possible changes in the plans which would more nearly conform to applicable requirements.
  - (3) When a mistake has been made calculating the fee for any permit, the proper fee shall be charged.

#### **7-10-3 Stop Work**

In accordance with its power to stop work under the building code, the County may stop work, with or without revoking permits, on any building or structure on any land on which exists an uncorrected violation of a provision of this Ordinance or permit or other form of authorization issued hereunder.

#### **7-10-4 Revoke Plan or Other Approvals**

Where a violation of this Ordinance involves failure to comply with approved plans or a condition upon which plan approval was subject, the County may, after

notice to the applicant and other known parties in interest (including any holders of building permits affected) and after a hearing:

- (1) Revoke the plan or other approval, or
- (2) Condition its continuance on strict compliance, the provision of security, or such other conditions as the County may reasonably impose.

#### **7-10-5 Remove Signs**

When a sign is illegally located within a public right-of-way, on any County-owned property, or in the case of an emergency or an identified hazard, the zoning administrator may, without notice, cause the immediate removal of such sign.

#### **7-10-6 Injunctive Relief**

The County may seek an injunction or other equitable relief in the district court to stop any violation of this Ordinance, or a permit, certificate, or other form of authorization granted hereunder. The County need only to establish a violation of this Ordinance to obtain an injunction.

#### **7-10-7 Remedies Cumulative**

The foregoing remedies shall be cumulative.

### **7-11 PENALTIES FOR VIOLATIONS**

#### **7-11-1 Abatement**

Any building or structure set up, erected, constructed, altered, enlarged, converted, moved, or maintained; or any land, building, or premises used contrary to the provisions of this Ordinance is hereby declared to be unlawful and a public nuisance. The County attorney may commence action or proceedings for the abatement, removal, and enjoinder thereof in the manner provided by law. The County Attorney may also take such other steps and may apply to such court as may have jurisdiction to grant such relief as will abate and remove such building or structure, and restrain and enjoin any person, firm, or corporation from setting up, erecting, building, maintaining, or using any building, structure, or property contrary to the provisions of this Ordinance.

#### **7-11-2 Misdemeanor**

Any person violating, causing or permitting a violation of the provisions of this Ordinance shall be guilty of a class C misdemeanor. Such person shall be deemed to be guilty of a separate offense for each and every day, after a citation is issued, during which any portion of any violation of this Ordinance is committed, continues, or permitted by such person.

#### **7-11-3 Civil Action**

Emery County, or any person aggrieved or injured by such violation, may, in addition to other remedies provided by law, institute civil proceedings in the District Court to prevent, enjoin, abate or remove the violation.

#### **7-11-4 Other Remedies**

The County shall have such other remedies as are and as may be from time to time provided by Utah law or County ordinance for the violation of any provision of this Ordinance.

**7-12 APPEAL**

Any person adversely affected by a decision of the Zoning Administrator or other official enforcing the provisions of this Ordinance may appeal for relief therefrom to the Board of Adjustment as provided in this Ordinance; provided, however, that any violations of this Ordinance which is a misdemeanors are not appealable to the Board of Adjustment.

**7-13 CONTINUATION**

Nothing in this Ordinance shall prohibit the continuation of previous enforcement actions, undertaken by the County pursuant to previous and valid resolutions, ordinances, and laws.



**ARTICLE VIII  
BOARD OF ADJUSTMENT**

**8-1 AUTHORITY AND PURPOSE**

The Emery County Board of Adjustment is hereby charged with the duties, and granted the powers, provided in this Article, unless otherwise provided by law, for the purposes of providing just and fair treatment in the administration of the provisions of this Ordinance and assuring that substantial justice is done.

**8-2 APPOINTMENT, TERMS AND VACANCIES**

**8-2-1 Members**

The Board of Adjustment shall consist of five(5) regular members, together with two (2) alternate members. Each member or alternate shall be appointed for a term of three (3) years.

**8-2-2 Removal**

A member of the Board of Adjustment may be removed by the County Commission for cause if written charges are filed with the County Commission. The member in question shall be entitled to a public hearing upon request.

**8-2-3 Vacancies**

In the event of a vacancy on the Board of Adjustment, other than one caused by the normal expiration of a member's term, a replacement member shall be appointed by the County Commission to serve the unexpired term of the member or alternate whose office is vacant.

**8-2-4 Alternates**

At the request of the Chair, one or both of the alternate members shall sit in the place of a regular member(s) who may be temporarily unable to act owing to absence from the County, illness, conflict of interest in a case before the Board, or other good cause.

**8-3 ORGANIZATION AND PROCEDURES; VOTING LIMITATIONS**

**8-3-1 Chair; Term**

The Board of Adjustment shall elect a Chair from among its own members, whose term shall be one (1) year.

**8-3-2 Meetings**

Meetings of the Board of Adjustment shall be held at the call of the Chair and at such other times as are required by this Ordinance or otherwise permitted by its by-laws; provided, however, that meetings upon matters set forth in Section 8-4, below, must be called and held within the time limits required hereby. Meetings for other matters, such as adopting or amending by-laws, are not

subject to deadlines and may be held at any time.

**8-3-3 By-laws**

The Board of Adjustment may adopt such by-laws as it may deem expedient for the conduct of its business, provided that the same do not conflict with this Ordinance or with state statute. It may also create and fill other offices as it may determine with the consent of the County Commission. The following provisions may not be changed by the By-laws, unless otherwise provided by state law:

- 8-3-3-1 The Chair shall conduct all meetings and shall, upon request by an interested party or upon the Chair's own motion, administer oaths and issue subpoenas to compel the attendance of witnesses;
- 8-3-3-2 Parties to any appeal or application have the right to be present, in person or through an agent or attorney, at their appeal hearings;
- 8-3-3-3 All meetings of the Board of Adjustment shall comply with the requirements of Utah Code, Title 52, Chapter 4, Open and Public Meetings;
- 8-3-3-4 The Board shall keep minutes of its proceedings, showing members and alternate members present at each meeting, and recording the vote, or abstention, of each such person upon every question, and all such records are public;
- 8-3-3-5 No official action may be taken unless, at least three members or alternate members are present and participate therein;
- 8-3-3-6 In order to reverse any order, requirement, decision, or determination of any administrative official, board or agency as to which the Board of Adjustment has appellate jurisdiction, or to grant any variance, the concurring vote of not less than three of those members or alternate members participating is required.

**8-3-4 Conflict of Interest**

No member or alternate member shall hear or vote on any matter in which he or she, or anyone related to the member by blood or marriage, has a direct financial interest, nor in which such member has a conflict of interest as defined in state laws relating thereto. Persons related to a member do not include relations more remote than first cousins.

**8-4 POWERS AND DUTIES**

**8-4-1 Appeals from Actions of Zoning Administrator/Planning Commission**

The Board of Adjustment shall hear and decide appeals from decisions applying this Ordinance made by the Zoning Administrator or the County-wide Planning Commission.

**8-4-2 Variances**

The Board of Adjustment may grant or deny variances of zoning regulations in accordance with Section 8-6 of this Ordinance;

**8-4-3 Nonconforming Uses**

The Board of Adjustment shall hear and decide claims regarding the existence, expansion, or modification of nonconforming uses.

**8-4-4 Boundary Issues**

The Board of Adjustment shall hear and decide issues concerning the interpretation of the zoning maps and disputed questions of lot lines, zone boundary lines, or such similar questions as may arise in the administration of the zoning regulations.

**8-5 APPEAL HEARINGS**

**8-5-1 Not the Same as Variance Power**

In reviewing decisions on Appeal under Subsection 8-4-1 above, the Board of Adjustment shall apply this Ordinance and shall not vary or nullify its terms or requirements. Such appellate power, unlike the power to grant variances, is limited to affirming or reversing the action being appealed. When the Board of Adjustments reverses a decision, its power is limited to remanding the matter to the official or body which made the original decision for further action.

**8-5-2 Limit to Procedural Correctness**

In reviewing matters appealed under Subsection 8-4-1, the Board of Adjustment shall consider and determine the correctness of facts upon which the decision or action appealed from is based; the correctness of the procedure followed in reaching such decision or action; and the correctness of the interpretation of this Ordinance as applied in the decision being appealed.

**8-5-3 Procedure in Appeals**

During an appeal hearing, the Chair shall preside and conduct according to the following rules of due process, and such others as the Board may adopt in its by-laws:

8-5-3-1 Every hearing shall be conducted by the Chair in an orderly manner and statements made limited to matters which are relevant to the issues of the Appeal.

8-5-3-2 Speakers, statements and exhibits (documentary evidence) shall be noted in the minutes.

8-5-3-3 Following the taking of statements and evidence, the Board Members present shall confer and consult the Ordinance and may request clarifications from, but shall not be interrupted or disturbed by, others present. Any person, not a member of the Board, who is

out of order may be excluded from the meeting.

- 8-5-3-4 The Chair shall give each member an opportunity to be heard and ask questions, but shall control the length of discussion. At the end of discussion, the Chair shall propose, or call for proposals of, findings of fact and rulings on the matter in question. Unless a finding or ruling shall receive three (3) votes, it shall not be adopted and the decision being reviewed shall be affirmed.
- 8-5-3-5 The hearing may be adjourned until a later time or continued to another date, at the discretion of the Board, to allow additional evidence to be adduced or for other good cause. However, during such adjournment or continuance, none of the Members sitting on the matter shall discuss it among themselves or with any of the parties.
- 8-5-3-6 If, during the hearing, it becomes apparent that any Member participating therein has a conflict which precludes such Member from hearing the matter, the meeting shall be adjourned or continued as necessary to assure that the matter is heard and decided by an impartial panel.
- 8-5-3-7 The Board may request legal advice from the County Attorney on any matter before it, but is not bound thereby.
- 8-5-3-8 Each decision on appeal shall be transmitted to the official, board or agency whose original decision was appealed for action in accord with the Ruling of the Board. If the original decision is upheld, the matter shall proceed as before the appeal. If the matter is reversed, the Board's decision shall so state and direct the original officer or body to take action consistent with its ruling.

## **8-6 VARIANCES**

### **8-6-1 Application**

Any person or entity owning, leasing, or holding a beneficial interest in any land within the unincorporated territory of this county, may apply to the Board of Adjustment for a variance of particular requirements of this Ordinance or of the applicable zone, such as size and width of lots, frontage, setback, building size and height, or other similar regulations.

### **8-6-2 Distinguished from Appeals**

Requests for variances are not appeals and shall be considered according to the rules in this Section 8-6. Variances are not waivers from the requirements of this Ordinance nor shall they be used to change zoning policies reflected in this Ordinance and the Emery County General Plan, or to depart so far from such

standards and requirements as to work a nullification thereof.

**8-6-3 Content of Application**

An application for a variance shall be in writing and shall include:

- (a) The name, address and telephone number of the applicant;
- (b) A map or plat of the property in question, in sufficient detail to identify its size, streets or roads adjacent thereto, geographical features or any other information relevant to the matter;
- (c) The zone in which the property is situated;
- (d) The requirement or requirements in this Ordinance of which the variance is sought, the extent of such variance, and any proposed conditions of its granting; and
- (e) A statement of the claimed basis for the variance under this section (See 8-6-2, et sec., below).

**8-6-4 Legal Grounds for Granting**

The following rules shall govern the Board of Adjustment in determining whether or not to grant a variance:

- 8-6-4-1 The determination must be supported by factual findings which are entered in the minutes.
- 8-6-4-2 Variances may be granted only where all of the following apply:
  - (a) Literal or strict enforcement of the regulation in question would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of this Ordinance, but only if:
    - (1) The hardship arises from conditions on or associated with the property for which the variance is sought;
    - (2) The hardship is peculiar to the property and not general to the neighborhood; and
    - (3) The hardship was not:
      - (i) self-imposed, in that it was created by an action or decision of the applicant or a previous owner of the property; or
      - (ii) economic, in that it consists only of a diminished value of the property or is based on the costs to the applicant of complying with the regulation in question.
  - (b) There are special circumstances attached to the property that do not generally apply to other properties in the same district, but only if such circumstances relate to the claimed unreasonable

hardship under 8-6-4-2 A1., above, and deprive the property of privileges enjoyed by other properties in the Zone;

- (c) An adjustment of the regulation is essential to the enjoyment of a substantial property right possessed by other properties in the same district;
- (d) The variance will not substantially depart from the general plan and will not be contrary to the public interest; and
- (e) The spirit of the zoning Ordinance is observed and substantial justice done.

**8-6-5 Burden of Proof**

In hearings on variances the applicant shall bear the burden of proof, meaning that, unless all of the facts supporting the granting of a variance are proven by a preponderance of the evidence, no variance shall be granted.

**8-6-6 Run with the Land**

Variances run with the land which means that they pass to new owners along with title to the land.

**8-6-7 "Use Variances" Illegal**

No variances may be granted which purport to allow activities or businesses which are otherwise prohibited within the Zone. Whether designated as "Use Variances" or any other name, such rulings by the Board of Adjustment are not true variances and are void.

**8-6-8 Contents of Decisions**

In granting a variance, the Board of Adjustment shall state the specific regulation or requirement involved and the extent to which it is adjusted. The Board of Adjustment shall impose conditions upon variances so as to:

- (a) Mitigate any harmful affects of the variance upon neighboring properties;  
or
- (b) Serve the purpose of the standard or requirement that is being modified.

**8-6-9 Rulings Restricted to Specifics of Case**

Every decision of the Board of Adjustment is limited to the specific property, facts and circumstances of the case before it, and no decision of the Board of Adjustment shall establish a precedent or bind the Board to grant similar variances in other cases.

**8-6-10 Variances Granted in Writing**

Each variance granted hereunder shall be made in writing, a copy of which shall be sent or delivered to the grantee, and shall contain the information required in the application and findings of fact and conclusions addressing each of the factors set forth in 8-6-2(b) above, and shall state specifically the

regulation or standard affected and the extent to which the same is varied as well as any conditions attached to the granting thereof. All variances granted shall be kept in the Office of the Zoning Administrator and shall be open to public inspection.

**8-6-11 Findings Required for Denials of Variances**

Whenever the Board of Adjustment denies a variance, it shall make written findings which shall be attached to the application and kept in the Office of the Zoning Administrator.

**8-7 - OTHER MATTERS**

**8-7-1 Determination of Nonconforming Use and Zone Boundary Issues**

Questions regarding the existence of nonconforming uses, interpretation of zoning maps, zone boundary lines may be considered at the request of any affected property owner or occupant or of any official, board or agency of the County, whether or not a determination has been made by another officer, board, or agency. Such matters shall be determined by the Board of Adjustment based upon the evidence presented, without deference to the findings or rulings of other County agencies, and the rulings of the Board of Adjustment shall control thereafter.

**8-7-2 Procedure, Application for Review**

Applications for a determination of such matters shall be in writing and shall include:

- (a) The name, address and telephone number of the applicant, the owners and occupants of the property in question and all neighboring land owners and occupants;
- (b) A description of the question to be determined;
- (c) The legal description of any property involved;
- (d) The provision of this Ordinance, map or plat, including Zoning Maps, from which the question arises;
- (e) A statement whether any certified survey of the property or lines in question is known to the applicant; and
- (f) Any other maps, surveys, documents, or source of information which will assist the Board in determining the questions presented.

**8-7-3 Notice of Inquiry and Issues**

The Board shall send notice to all landowners and occupants of properties affected by the question and inquire as to the existence of any certified surveys, court decrees, or other information bearing on the question, and setting a date for the hearing within 21 days following the date of the notice.

**8-7-4 Findings Binding**

The Board's findings shall be stated in the minutes and shall be binding upon the County and the property involved, and a certified copy of its ruling may be ordered by the Board to be incorporated into the Zoning Map or recorded in the Office of the Emery County Recorder.



**ARTICLE IX  
ZONES AND REGULATIONS WITHIN ZONES**

**9-1 ZONES AND ZONING CLEARANCES**

**9-1-1 Zones Enumerated**

In order to carry out the purposes of this Ordinance the unincorporated territory of Emery County, Utah, is hereby divided into zones, as follows:

- (a) A-1 (Agricultural) Zone [may be several to apply to different areas]
- (b) MG&R-1 (Mining, Grazing & Recreation) Zone
- (c) M-1 (Mountain) Zone
- (d) I-1 (Industrial) Zone

**9-1-2 Zoning Clearance Prerequisite for Building Permit**

Prior to building any new structure or materially changing the use of any property in any zone, a zoning clearance must be obtained from the Zoning Administrator's office. The purpose of a zoning clearance is to certify that a proposed structure and/or use has been determined to be authorized under this Ordinance. If the project is a conditional use in the zone, the zoning clearance further certifies that a valid conditional use permit has been granted and is on file with said office.

A zoning clearance is not a building permit. Building permits may be required by state law, separately from the zoning clearance required by this Ordinance and are concerned with construction standards which are separate and distinct from the subject matter of this Ordinance.

**9-2 – ZONE RECORDS; BOUNDARIES**

**9-2-1 Use of Information Technology GIS**

The location and boundaries of each of said zones are to be ascertained by reference to records and software contained in GIS computer programs and files in the Information Technology Department of Emery County and used to produce maps representing such records. Said records shall be maintained under the direction of the Countywide Planning Commission. A printed map produced from the most current of said records shall be available for inspection in the Planning and Zoning office during business hours. All databases, layers, notations, and other data used to locate zones and boundaries and print maps thereof are hereby incorporated herein as a part of this Ordinance. (*Res. 11-12-79*)

**9-2-2 Rules for Resolving Boundary Issues**

Where uncertainty exists with respect to the boundaries of Zones, and there is no definitive record of actions by the County Commission or the County-wide Planning Commission, the following rules shall apply:

- (a) Where the indicated boundaries of a zone approximately coincide with roads, streets or land survey lines, the center of such roads or streets and such land survey lines shall be construed to be the zone boundaries.
- (b) Where the indicated boundaries approximately coincide with canals, natural streams, or watercourses, the center of said canal, natural stream, or watercourse shall be construed to be the zone boundaries.

**9-2-3 Zone Boundaries**

In establishing zone boundaries, the Countywide Planning Commission shall endeavor to follow property boundaries or refer to monuments, existing geographical features and landmarks in order to facilitate location of the zone boundary lines.

**9-3 A-1 AGRICULTURAL ZONE**

**9-3-1 Legislative Intent**

The A-1 Zone is intended as a district in which the primary use of the land is *agriculture*, as defined in Article II. This zone is characterized by farms and ranches and single family dwellings as authorized herein. This zone is also intended to allow, as conditional uses, certain non-agricultural structures and/or activities as provided herein.

**9-3-2 Objectives**

The objectives of the A-1 Zone are:

- (a) To protect and encourage arable land within Emery County and protect agriculture, which is an important part of the heritage of Emery County and the basis of the rural lifestyle prized by residents of Emery County;
- (b) To contain the costs of government services such as police protection, fire fighting, ambulance services, school bus service, utilities, road building and maintenance, etc., by limiting residential development in areas where such services can be provided without undue expense;
- (c) To assure orderly and efficient growth in appropriate areas and prevent residential sprawl;
- (d) To minimize conflicts between agriculture and residential development; and
- (e) To protect and enhance the economic role of agriculture in Emery County.

**9-3-3 Permitted and Conditional Uses**

Permitted and Conditional Uses allowed within the zone are indicated by Table 9-1 at the end of this Article which shall be updated from time to time to reflect changes passed by the County Commission.

The uses indicated in said Table 9-1 are further defined, and are subject to the regulations set forth in Article X and XI.

**9-3-4 Point System**

To qualify as a zoning lot for purposes of zoning clearance for a residence in the Zone, a proposed parcel must receive a total score of 1000 points or more, based on the following criteria:

- (a) Proximity to Incorporated Communities (measured in distance traveled on existing roads from property entrance):

1 mile or less . . . . .	250 points
More than 1 and 2.5 or less . . . . .	200 points
More than 2.5 and 5 miles or less . . . . .	150 points
More than 5 miles . . . . .	50 points

- (b) Road access – proximity of proposed building site to City, County or State roadway over owner built lane or driveway:

250 feet or less . . . . .	250 points
More than 250 and 500 feet or less . . . . .	200 points
More than 500 and 1000 feet or less . . . . .	150 points
More than 1000 feet . . . . .	50 points

A road encroachment permit from the Emery County Road Department is required for any private access to county roads.

Similar authorization may be required for state highways.

Neither Emery County nor any agency providing police, ambulance or firefighting services shall under any circumstances be responsible for inability to deliver such services due to impassable private lanes or driveways.

- (c) Lot Size:

5 points per acre up to a maximum of 200 points.

(Minimum: 50 points for 10 acres. Maximum: points for 40 acres)

- (d) Culinary Water Service:

Documented culinary service from a public water system monitored in compliance with the Utah Safe Drinking Water Act . . . . .	200 points
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Underground spring or well approved by the Utah State Engineer for domestic use . . . . .	100 points
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Cisterns with access to water treated to safe drinking water standards ( <i>See Section 9-3-10-1</i> ) . . . . .	100 points
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- (e) Electric Service:

Documented connection to public electric grid . . . . .	200 points.
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- (f) Sewage Disposal:

Documented connection to public sewer system or other

- disposal system approved pursuant to state law . . . . . 200 points
- (g) Size of dwelling (determined as for purposes of a building permit):
  - 2500 square feet or greater . . . . . 100 points
  - 1500 to 2500 square feet . . . . . 50 points
  - Less than 1500 square feet . . . . . 25 points

This point system is established for purposes of zoning clearance only. It does not affect building permit requirements, which deal with construction codes and requirements. Zoning clearance pursuant to this section is required in addition to a building permit where a building permit is required by Utah State law.

**9-3-5 Minimum Lot Size**

- Dwellings: 10 acres with a minimum of 1000 points under Subsection 9-3-4, above.
- Churches: 3 acres

**9-3-6 Frontage**

Each zoning lot shall comply with the frontage requirements as follows:

<b>USE</b>	<b>REQUIREMENTS</b>
One family dwelling	<p>Twenty (20) feet of frontage upon a designated county road</p> <p><b>OR</b></p> <p>Shall have direct and uninterrupted access to a County road over a private travel easement which complies with the following conditions:</p> <ul style="list-style-type: none"> <li>(a) The designated easement is fifty (50) feet or more in width from a designated County road.</li> <li>(b) Said easement is evidenced by a recorded deed establishing an express easement running with the property served thereby.</li> <li>(c) A document, acceptable to the County, executed by the owner of such property declaring that the travel way is a private roadway and absolving the County from any responsibility for any maintenance upon the easement or roadway unless and until such time as it has been formally deeded and accepted by the County.</li> </ul>

**9-3-7 Setbacks**

All buildings shall be set back from the property lines as follows:

- (a) Front Setback:

All buildings shall be set back at least fifty-five (55) feet from the center of any public road or thirty (30) feet from the right-of-way line, whichever is the greater distance, except that all buildings situated adjacent to State or Federally designated highways, except non access highways, shall be set back at least fifty (50) feet from the right-of-way line.

(b) Side Setback:

All dwellings shall be set back at least ten (10) feet from a side lot line, except that no side setback shall be required for accessory buildings, barns, coops, and sheds which are located over one hundred (100) feet from the nearest dwelling. On corner lots, the required setback from the side property line which abuts on the street shall be the same as the front setback. Feed lots for over 100 animals must be at least 1/4 mile from the nearest dwelling or municipal boundary or Federal highway.

(c) Rear Setback:

All dwellings shall be set back from the rear property line at least ten (10) feet, except that no rear setback shall be required for accessory buildings, barns, coops, and sheds, which are located over one hundred (100) feet from the nearest dwelling.

**9-3-8 Height Requirements**

There shall be no minimum height requirements for buildings in the A-1 Zone.

**9-3-9 Size of Dwelling**

See Point System, Section 9-3-4 above.

**9-3-10 Special Provisions**

- 9-3-10-1 All dwellings and other buildings intended for human occupancy not connected to a provider of water treated to Utah safe drinking water standards may be constructed using an private tank or cistern provided that:
- (a) connection to a provider of water treated to Utah safe drinking water standards is not feasible; and
  - (b) the design of such tank or cistern has been approved by the Emery County Building Official.
- 9-3-10-2 All dwellings and other buildings intended for human occupancy shall be served by either a municipal sewage collection and treatment system or by individual septic system constructed as required by Utah State law.

## **9-4 MINING, GRAZING & RECREATION (MG&R-1) ZONE**

### **9-4-1 Declaration of Legislative Intent**

The MG&R-1 Mining, Grazing and Recreation Zone generally covers the dry mountain and desert areas of the County. Because of the limitations imposed by climate, topography, soil capability, inadequate water supply, and the presence of economically significant mineral deposits, this area has historically been utilized as a place for the grazing of livestock on the open range and as the location of numerous mining and mineral exploration sites. The peculiar characteristics and conditions present in this area make the land most appropriately suited for a continuation of these uses. However, because of the relatively fragile balance of nature in the area, all permitted activities must be carried out in a manner consistent with the limitations of the environment. It is hereby declared that the specific purpose and intent of the Legislative Body in establishing the M&G-1 Mining and Grazing Zone are:

- (a) To take advantage of and to more fully implement the basic purposes for planning and zoning as set forth in Section 17-27 of the Utah State Code.
- (b) To promote the conservation of water, land, mineral, and other resources.
- (c) To prevent the degradation of the natural and social environment.
- (d) To foster agriculture, mining, and industry within the state.
- (e) To provide a location for certain types of agricultural, industrial, and other uses which, because of certain characteristics of operation such as odor, noise, etc., are not compatible with urban development.

In order to accomplish the above stated purposes, those uses which are reasonably necessary to the use of the land for agricultural, mining, and certain types of industrial operations shall be encouraged, provided that adequate guarantees for the protection of the area have been incorporated. Conversely, residential, commercial, and similar urban type uses which are inconsistent with the continued use of the area for the above stated purposes are not permitted in this zone.

The specific regulations necessary for the accomplishment of the purposes as outlined above are hereinafter set forth. (*Res. 11-12-79*)

### **9-4-2 Permitted Uses and Conditional Uses<sup>1</sup>**

Permitted and Conditional Uses allowed within the zone are indicated by Table 9-1 at the end of this Article which shall be updated from time to time to reflect changes passed by the County Commission.

The uses indicated in said Table 9-1 are further defined, and are subject to

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<sup>1</sup> The numbering called for in the amending ordinance was erroneous and has been corrected.

the regulations set forth in Article X and XI.

**9-4-3 Area Requirements**

There shall be no minimum area requirements except as may be required under other provisions of this Code. *(Res. 11-12-79)*

**9-4-4 Width Requirements**

There shall be no minimum width requirements except as may be required under other provisions of this Code. *(Res. 11-12-79)*

**9-4-5 Location Requirements**

All buildings shall be set back at least sixty (60) feet from the center line of a County road or thirty (30) feet from the front line, whichever is greater, except as required in Article VI, Section 6-13.

**9-4-6 Size and Height Requirements**

There shall be no size and height requirements. *(Res. 11-12-79)*

**9-4-7 Special Requirements**

- (a) The yards around buildings shall be kept free of debris, refuse, weeds, and other flammable material which may constitute a fire hazard.
- (b) No building used for human habitation shall be constructed nor shall any permit be issued therefor, until sewage disposal facilities have been approved in accordance with minimum health standards as established by the State and/or local health authority.
- (c) All dwellings, individual mobile homes, caretaker dwellings and other structures intended for human occupancy shall be served by an approved water system. However, such dwellings and structures may be constructed using an individual water storage facility provided:
  - (1) that the proposed use or building is permitted within the zone and that, if the use is for a dwelling, said dwelling shall qualify as a caretaker dwelling;
  - (2) that connection to an approved water system is not feasible; and
  - (3) that the design of the proposed water storage facility has been approved by the local health authority in accordance with County and State standards.

**9-4-8 Supplementary Regulations**

Uses within this zone shall also comply with all applicable requirements as set forth under Article VI entitled "Supplementary Regulations to Zones." *(Res. 11-12-79)*

**9-5 M-1 MOUNTAIN ZONE<sup>2</sup>**

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<sup>2</sup> The numbering called for in the amending ordinance was erroneous and has been corrected.

**9-5-1 Declaration of Legislative Intent**

The Mountain Zone includes the watershed for the communities on the West side of the county. It is characterized by forested areas of the Manti Plateau, together with canyons, riparian and valley floors. It contains numerous reservoirs, streams and areas of snow pack, as well as forested areas and steep slopes.

Public concerns in this zone are prevention of forest fires and the health of forests, which in turn affect the water supplies to communities in and out of Emery County. Forestry methods which may result in erosion, silting of streams, loss of habitat for fish and wildlife, degradation of scenic vistas and other environmental damage are major concerns in this Zone. Because of these concerns, and other limitations imposed by topography, climate, soil conditions, and other natural features, use of the land within this zone has been restricted to uses which can be regulated to protect the watershed, wildlife habitat and the scenic values in the area, while allowing sustainable uses, such as livestock grazing, recreational camping, fishing, hunting, etc. and timber harvesting. Mining activity, which is a major part of the county's economy, is allowed as a conditional use with careful planning and permitting. The area contains some private land which may be used for cabins, provided they can be made compatible with the protection of the watershed and meet the requirements set forth herein.

**9-5-2 Purposes**

The specific purposes of the M-1 Zone are as follows:

- (a) To implement the planning and zoning powers set forth in Sections 17-27-5 and 17-27-13 of the Utah State Code, this Ordinance generally and the Emery County General Plan.
- (b) To protect and conserve the water supply, vegetation, soils, wildlife, and other natural resources within the watershed.
- (c) To prevent erosion, flooding, forest fires, and the waste or destruction of resources and scenic values.
- (d) To protect reasonable access rights of the public for recreation, sustainable use, grazing, hunting, fire fighting and forest management.
- (e) To supplement and coordinate land management decisions of other governmental agencies with jurisdictions in the areas.
- (f) To protect the condition of forests and habitat, existing trails, roads, signs and structures and campgrounds, as well as natural and man-made lakes and streams, and the natural beauty of the area.



- (g) To limit or prohibit uses and practices which create hazardous conditions or unreasonably degrade or damage the quality of the environment in this zone.

**9-5-3 Permitted Uses and Conditional Uses**

Permitted and Conditional Uses allowed within the zone are indicated by Table 9-1 at the end of this Article which shall be updated from time to time to reflect changes passed by the County Commission.

The uses indicated in said Table 9-1 are further defined, and are subject to the regulations set forth in Article X and XI.

Regulations governing Planned Unit Developments in this Zone are set forth in the Subdivision Article of this Ordinance.

**9-5-4 Area Requirements**

No dwelling shall be constructed on a lot smaller than 40 Acres, unless the lot is part of an approved Mountain Subdivision.

**9-5-5 Special Requirements**

9-5-5-1 All dwellings and structures shall be set back at least 100 feet from the nearest public road or highway.

9-5-5-2 Any disturbed natural ground surface which is not built upon or paved, shall be restored or reclaimed to its natural state in a manner which will prevent erosion and growth of noxious weeds.

9-5-5-3 Every dwelling shall have a sewage disposal and/or treatment system meeting the requirements of Utah State law.

**9-6 I-1 INDUSTRIAL ZONE**

**9-6-1 Declaration of Legislative Intent**

The I-1 Industrial Zone has been established for the purpose of providing places where manufacturing, processing, warehousing and fabrication of goods and material can be carried on with minimum conflict or deleterious effect upon surrounding properties. It is also intended in this zone to promote the economic well-being of the people and to broaden the tax base.

This zone is characterized by a mixture of industrial, manufacturing and processing establishments with intermittent open land that is served by streets, power, water and other utilities and facilities or where such facilities can be readily provided.

The specific regulations necessary for the accomplishment of the purposes of the zone are hereinafter set forth. (*Res. 11-12-79*)

**9-6-2 Permitted Uses and Conditional Uses**

Permitted and Conditional Uses allowed within the zone are indicated by Table 9-1 at the end of this Article which shall be updated from time to time to reflect changes passed by the County Commission.

The uses indicated in said Table 9-1 are further defined, and are subject to the regulations set forth in Article X and XI.

**9-6-3 Area Requirements**

There shall be no minimum area requirements except that an area sufficient to accommodate location requirements, off-street parking, loading and unloading, and vehicular access shall be provided and maintained. *(Res. 11-12-79)*

**9-6-4 Width Requirements**

No width requirements. *(Res. 11-12-79)*

**9-6-5 Location Requirements**

All buildings shall be set back at least sixty (60) feet from the center of any public road or thirty (30) feet from the right-of-way line, whichever is the greater distance, except as required in Article VI, Section 6-13. *(Res. 11-12-79)*

**9-6-7 Height and Size Requirements**

No height and size requirements. *(Res. 11-12-79)*

**9-6-8 Special Provisions**

- (a) The yards around buildings shall be kept free of debris, refuse, weeds, and other flammable material which may constitute a fire hazard.
- (b) No building used for human habitation shall be constructed nor shall any permit be issued therefor, until sewage disposal facilities have been approved in accordance with minimum health standards as established by the State and/or local health authority.
- (c) All dwellings, individual mobile homes, caretaker dwellings and other structures intended for human occupancy shall be served by an approved water system. However, such dwellings and structures may be constructed using an individual water storage facility provided:
  - (1) the proposed use or building is permitted within the zone and that, if the use is for a dwelling, said dwelling shall qualify as a caretaker dwelling;
  - (2) connection to an approved water system is not feasible; and
  - (3) the design of the proposed water storage facility has been approved by the local health authority in accordance with County and State standards.

**9-6-9 Supplementary Regulations**

Uses within this zone shall also comply with all applicable requirements as set forth under Article VI entitled "Supplementary Regulations to Zones." (*Res. 11-12-79*)

*(End of page)*

Table 9-1

(P=Permitted Use; L1=Level 1 Conditional Use permit required;  
L2=Level 2 Conditional Use; L3=Level 3 Conditional Use; N=Not Allowed)

Description of Use	A-1	MG& R-1	M-1	I-1
Farms and Ranches, except animal by-products plants and concentrated animal feeding operations (CAFOs)	P	P	P	P
Minor Utility Transmission Lines and Projects	P	P	P	P
Reservoirs with a potential capacity under 20 acre feet of water	P	P	P	P
Public Agency Parks	P	P	P	P
Single-family dwellings	L1	L1	L1	N
Residential facilities for elderly	L1	L1	L1	N
Residential facilities for persons with a disability	L1	L1	L1	N
Home Occupations	L1	L1	L1	L2
Forest and plant nurseries and greenhouses	L1	L1	L1	L1
Fish hatcheries and the raising of fish	L1	L1	L1	L1
Country Clubs, Golf Courses, Skeet and Trap Shooting Clubs	L2	L2	L2	L2
Gas and Oil Wells	L1	L1	L1	L1
Commercial Storage Units	L2	L2	L2	L2
Sand and Gravel Pits	L1	L1	L1	L1
Hunting preserves and associated accessory storage buildings	L2	L2	L2	L2
Rifle, shotgun, archery shooting ranges	L2	L2	L2	N
Minor mine developments	L2	L2	L2	L2
Heavy industry	L3	L3	L3	L2

<b>Description of Use</b>	<b>A-1</b>	<b>MG&amp; R-1</b>	<b>M-1</b>	<b>I-1</b>
Seismograph sites	L2	L2	L2	L2
Water reservoirs with a capacity over 20 acre feet	L2	L2	L2	L2
Schools	L2	L2	L2	N
Churches	L2	L2	L2	N
Public parks and playgrounds	L2	L2	L2	L2
Fur farms	L2	L2	L2	N
Kennels	L2	L2	L2	L2
Riding academies and clubs	L2	L2	L2	N
Minor mine developments	L2	L2	L2	L2
On-premise occupations	L2	L2	L2	L2
Temporary Uses ( <i>See Section 11-3-3</i> )	L2	L2	L2	L2
Moved Buildings	L2	L2	L2	L2
Significant sand or gravel operations	L2	L2	L2	L2
Emery County promotional signs	L2	L2	L2	L2
Oil and Gas Operations	L2	L2	L2	L2
Travel related commercial projects	L2	L2	L2	L2
Automobile and motorcycle race tracks and race courses	L2	L2	N	L2
Campground and picnic facilities	L2	L2	L2	N
Airports and airstrips	L3	L3	L3	L3
Major utility transmission lines	L3	L3	L3	L3
Railroads	L3	L3	L3	L3
Water treatment facilities and transmission lines	L3	L3	L3	L3
<b>Description of Use</b>	<b>A-1</b>	<b>MG&amp; R-1</b>	<b>M-1</b>	<b>I-1</b>

Dump yards, land fills, and salvage yards	L3	L3	N	L3
Solid waste disposal landfill	L3	L3	N	L3

*(End of page)*

**ARTICLE X  
CONDITIONAL USE PERMITS**

**10-1 GENERAL PROVISIONS**

**10-1-1 Building Permits Distinguished**

Building permits and occupancy permits are not conditional use permits and cannot be issued by the County-wide Planning Commission, the Board of Adjustment or the County Commission. If the offices of Zoning Administrator and Building Inspector are occupied by separate individuals, building permits cannot be issued by the Zoning Administrator.

**10-1-2 Variances Distinguished**

Variances may be granted only by the Board of Adjustment and are not conditional use permits. The Board of Adjustment is not authorized to issue conditional use permits.

**10-1-3 Purposes**

10-1-3-1 Conditional use permits are provided herein as a means for allowing uses which would otherwise be prohibited by this Ordinance, by imposing limits upon their establishment and operations so as to mitigate or eliminate undesirable impacts.

10-1-3-2 The purpose of this Article is to establish standards, rules and procedures for granting or denying conditional use permits and for identifying and addressing issues which may arise in the permitting process.

**10-2 PERMIT TYPES**

**10-2-1 Level 1 Permits**

10-2-1-1 Level 1 conditional use permits may be granted by the Zoning Administrator upon findings that are required herein.

10-2-1-2 Level 1 Permits are intended for uses having limited impact on surrounding land uses, where all issues are resolved by the required conditions set forth herein for such use.

10-2-1-3 If the Zoning Administrator determines that an application for a Level 1 conditional use permit presents novel or unusual land use planning issues or involves concerns which fall within Subsection 10-2-2-2 or 10-2-3-2, he/she may refer such application to the Countywide Planning Commission for review as a Level 2 permit or Level 3 permit as the case may be.

10-2-1-4 Appeals may be made to the Planning Commission of any decision made by the Zoning Administrator by any aggrieved person or by an

officer, employee, board or agency of the County affected by such action. Appeals shall be made in writing with the Secretary of the Planning Commission within ten (10) days after the decision is made. The Planning Commission may affirm, modify, or overrule the decision of the Zoning Administrator.

**10-2-2 Level 2 Permits**

- 10-2-2-1 Level 2 conditional use permits may be granted by the Planning Commission in accordance with the procedures and standards set forth herein.
- 10-2-2-2 Level 2 permits are intended to apply to uses which impact a particular neighborhood, zone or vicinity and which present issues specific to the use and location involved and call for conditions fashioned to address such issues for the particular location and surroundings. Uses on Public lands which, in the judgment of the Chair, are small in scope and are routinely permitted by State or Federal Agencies without extraordinary procedures, hearings or impact studies, and which do not substantially impact the County as a whole, may be treated as Level 2 Permitted Uses, provided notice thereof is provided to the County Commission.
- 10-2-2-3 If the Planning Commission determines that an application for a Level 2 conditional use permit presents land use and planning issues set forth in Subsection 10-2-3-2 herein, it may refer such application, together with its finding and recommendations, to the County Commission for review as a Level 3 permit.
- 10-2-2-4 Appeals may be made to the Emery County Commission of any decision made by the Planning Commission by any aggrieved person or by an officer, employee, board or agency of the County affected by such action. Appeals shall be made in writing with the Secretary of the County Commission within ten (10) days after the decision is made. The County Commission may affirm, modify, or overrule the decision of the Planning Commission.

**10-2-3 Level 3 Permits**

- 10-2-3-1 Level 3 conditional use permits may be granted by the Emery County Commission in accordance with the procedures and standards set forth herein.
- 10-2-3-2 Level 3 permits are intended to apply to uses having county-wide impact and uses which present issues specific to the use and location involved. Such permits are also intended for situations where the



interests and powers of other governmental and/or quasi-governmental entities require extraordinary coordination or resolution of conflicts with the County's interests in regulating the proposed use.

- 10-2-3-3 Appeals may be made to the District Court of any decision made by the County Commission by any aggrieved person or by an officer, employee, board or agency of the County affected by such action.

### **10-3 STANDARDS FOR DECISION MAKING**

#### **10-3-1 Role of the Granting Authority**

Granting Authorities under this Article exercise administrative, i.e. executive, powers. Such powers shall not be exercised arbitrarily or capriciously but only in accordance with the procedures and standards set forth herein and with the policies set forth in the Emery County General Plan and Zoning Ordinance.

#### **10-3-2 General Procedures**

In reviewing and acting upon applications for conditional use permits under this Article, the Granting Authority shall proceed in the following order:

- (a) determine the nature of the proposed use;
- (b) adopt any special procedures which may be necessary to a full and fair understanding of the matter before it;
- (c) hear and review evidence; and
- (d) make findings and issue decision.

#### **10-3-3 Criteria for Decisions**

- 10-3-3-1 In reviewing and acting upon applications for conditional use permits, Granting Authorities shall substantially conform to the standards set forth in this Subsection 10-3-3, which define the manner in which the review process shall be conducted and the goals thereof. The purpose of minutes and findings required in this Article is to document that these criteria have been substantially met.
- 10-3-3-2 Uniform principles and conditions shall be applied in granting or denying permits for uses and locations which are similar in nature.
- 10-3-3-3 The policies stated in the Emery County General Plan, this Ordinance and the purposes and goals of the applicable Zone shall be observed, and conditions imposed shall be reasonably formulated to mitigate or eliminate conflicts with said plan and purposes.
- 10-3-3-4 The concerns of owners and occupants of other properties near a proposed conditional use shall be considered, as well as the impact

of such use upon cities and towns, schools and school districts, and other governmental and quasi-governmental entities. Reasonable efforts shall be made to identify such parties and to invite their comments on the matter. Public comment shall be considered as only one of a variety of factors in the decision making process.

10-3-3-5 The granting authority shall consider and address the potential for the proposed use to become or create a nuisance.

10-3-3-6 Limits and conditions shall be reasonably fashioned to mitigate or eliminate undesirable effects of proposed uses and render the use compatible with the existing uses in the vicinity. Such limits and conditions may include, but are not limited to, setbacks and height limitations, special construction standards, fencing, paint colors, and security in the form of bonds or other sureties acceptable to the County to cover the cost of removing offensive structures and conditions and restoring the land to its former condition, should the applicant violate the terms of the permit or fail to carry out its obligations under the permit.

10-3-3-7 The granting authority shall consider the costs, or other burdens, which may be incurred by Emery County or other local governmental and quasi-governmental entities, in monitoring and enforcing compliance with conditions imposed and in providing public services to the property in question, and may deny a permit where such burdens are, in the opinion of the granting authority, excessive.

## **10-4 PROCEDURES**

### **10-4-1 Fees and Costs**

10-4-1-1 No application shall be processed without payment in advance of an application fee determined by reference to a Fee Schedule which shall be adopted, and amended from time to time, by resolution of the countywide Planning commission and approval by the Emery County Commission. This fee is not refundable, except as specifically directed herein. The fee schedule shall be based upon the reasonably anticipated cost to Emery County for the review of the application.

10-4-1-2 The payment of the application fee shall not prevent Emery County from requiring reimbursement for such other costs as may be incurred during the review process, provided such additional costs are reasonably required and actually incurred by Emery County in its review of the particular application. Such costs may include, but are

not limited to, the fees of independent consultants and experts, the costs of special reports and studies, transportation costs, etc. Failure to pay such costs is grounds for denial of the application, provided, however, that they shall not be incurred and may not be imposed without prior disclosure to the applicant.

- 10-4-1-3 The fee schedule shall also address fees for amendments to applications where such amendments increase the level of the permit required. The fee schedule may provide for reduction or waiver of such fees in order to prevent unwarranted duplication of fees.
- 10-4-1-4 The fee schedule shall also fix fees to be paid for annual inspections and/or renewals of permits where required under this Article
- 10-4-1-5 The county Commission, upon recommendation of the Countywide Planning commission, may waive application fees and/or amendment fees in full or in part, but only under circumstances where imposition of the full fee would be unfair or excessive under the circumstances. Such waivers must be based upon findings of fact and shall state the reasons why the fee should, in fairness to the applicant and to other permittees, be waived or reduced.

#### **10-4-2 Application**

- 10-4-2-1 Every application for a conditional use permit shall be filed in the Office of the Emery County Zoning Administrator and shall include the following information, as a minimum:
  - (a) A legal description of the property for which the permit is sought, a copy of the recorded plat showing the property, and a vicinity drawing or plan showing roads and other landmarks which will aid in identifying the property;
  - (b) A minimum of five (5) copies (or as required) of an area plot plan of the site showing existing and proposed buildings, railroads, easements, common drives, open space, trails, water courses or other important features within or adjacent to the property;
  - (c) Proof of ownership or other legal right entitling the Applicant to conduct the proposed use on the property;
  - (d) The name, address and telephone number of the applicant and the owners or occupants of the property, and any authorized representatives of such persons;
  - (e) The names and addresses of all persons owning and/or occupying property contiguous to the property in question; and
  - (f) A description of the proposed use including proposed

excavation, construction, paving, fill, buildings, equipment, activities on the property, number of persons employed, and such other information as may assist the Zoning Administrator or other Granting Authority in reviewing the application.

10-4-2-2 The Planning Commission may specify additional information to be included in applications.

10-4-2-3 The Zoning Administrator shall examine the application to determine:

- (a) If the application is complete;
- (b) If the proposed use qualifies as a conditional use under this Ordinance, and if so, what type of permit is required; and
- (c) The amount of the application fee according to the current fee schedule.

10-4-2-4 Following such examination, the Zoning Administrator shall give notice to the applicant of the following, as applicable:

- (a) If the application is incomplete, what information is necessary to complete it;
- (b) If the proposed use is a permitted use within the zone, the fact that no conditional use permit is required;
- (c) If the proposed use is neither a conditional use nor a permitted use under this Ordinance, the fact that the use is prohibited; or
- (d) If the proposed use is a conditional use hereunder, the type of permit and the amount of the application fee required.

10-4-2-5 Upon the submission of a completed application, a determination that the proposed use qualifies as a conditional use, and payment of the required fees, the Zoning Administrator shall, within 30 days, take further action as set forth herein.

### **10-4-3 Zoning Administrator Review**

10-4-3-1 If the proposed use is designated herein as requiring a Level 1 conditional use permit and presents no issues justifying referral to the Planning Commission, the Zoning Administrator shall make written findings according to the criteria set forth herein for the particular use involved and shall grant or deny the permit in accordance with such findings.

10-4-3-2 If the Zoning Administrator determines that the proposed use requires a Level 2 or 3 conditional use permit, or that it should be referred in accordance with Article X, Section 10-2 hereof, the Zoning Administrator shall submit the application and supporting

materials to the Chair of the Planning Commission for further action.

**10-4-4 Preliminary (Planning Staff) Review**

- 10-4-4-1 The Chair of the Planning Commission shall review each application forwarded by the Zoning Administrator and may call and convene a meeting of the Planning Staff for a preliminary review as provided herein. In cases where the application does not appear to present technical issues requiring staff input, the Chair may waive staff review and pass the matter directly to the Countywide Planning Commission for further action.
- 10-4-4-2 The Planning Staff Meeting shall be conducted by the Chair and shall include, unless excused by the Chair, the Zoning Administrator, the Chair, the county's engineering consultant, the County Road Superintendent, legal counsel, and such other persons as may be invited by the Chair. Applicants may attend such meeting, but are not required to do so. However, failure of an applicant to attend a Planning Staff Meeting which he/she has been requested to attend shall be grounds for adjourning the meeting to a later date.
- 10-4-4-3 The purpose of the Planning Staff Meeting is to assist both the Applicant and the Planning Commission as follows:
- (a) By identifying technical issues which may arise in connection with the proposed use and recommending matters which should be addressed by the Granting Authority;
  - (b) by identifying and marshaling relevant data, or advising the Granting Authority of what data it should seek;
  - (c) by recommending procedures which may be appropriate to the proposed use, in order to tailor the process to meet the particular requirements of the proposal; and
  - (d) by identifying other agencies or experts which may have interests in the proposed use, or which may provide relevant information regarding the same.
- 10-4-4-4 Planning Staff review is intended to be flexible and to facilitate communication among all affected parties and entities. Although such review should be completed without unwarranted delay, it may be continued or adjourned for production of required information, as the Chair shall deem expedient.
- 10-4-4-5 Upon completion of its review, the Planning Staff shall prepare its recommendations regarding the proposed conditional use permit in written form, setting forth scheduling and procedural plans

according to the complexity and size of the project or proposed use. Planning Staff may ask that additional information be gathered and considered before the application go before the entire Planning Commission for consideration.

- 10-4-4-6 The application shall be forwarded to the Planning Commission together with the findings and recommendations from the Planning Staff review. The Planning Staff is not, however, empowered to grant or deny conditional use permits.

**10-4-5 Planning Commission Review**

- 10-4-5-1 The Planning Commission shall consider the application and the recommendations of the Planning Staff in open session and shall first determine the procedural requirements for a proper review. Such consideration may be completed in one meeting or may be rescheduled, adjourned or tabled as the Planning Commission shall deem expedient to complete its review. If the proposed use is large and complex or involves other public entities, the Planning Commission may adopt or recommend a procedural plan for the project.
- 10-4-5-2 A procedural plan may divide consideration of the project into stages and specify particular elements to be approved as a prerequisite to others. A procedural plan may include, but shall not be limited to, critical path analysis and scheduling, public hearings, submission of additional plans and drawings as deemed necessary, economic, engineering and environmental studies, etc. It may require reports on specific elements and issues from the Planning Staff, other county officials or employment of expert consultants for advise on particular elements or stages of the project. It may also provide for responses to the application from any person or public entity affected by the proposed use.
- 10-4-5-3 Before the Planning Commission concludes its review, the Applicant shall be permitted to address the Commission and answer questions concerning the matter, and to submit amendments to the application addressing concerns and issues which may arise, and to suggest solutions to problems identified in the proceedings.
- 10-4-5-4 No findings shall be made, and no permit issued, until the Planning Commission is satisfied that it has sufficient information upon which to base its actions. Once satisfied the Planning Commission shall adopt findings meeting the Required Findings and Required

Conditions set forth for the use in question. Copies of the findings shall be kept in the applicant's file and delivered to the applicant.

10-4-5-5 If the application is for a Level 2 conditional use permit or has been referred by the Zoning Administrator under Subsection 10-2 as appropriate for such a permit, the Planning Commission shall take one of the following actions, based upon its findings in the matter:

- (a) Approve the conditional use;
- (b) Disapprove the conditional use;
- (c) Approve the conditional use subject to modification; or
- (d) Where considered necessary, act to table for further consideration.

10-4-5-6 If the application is for a Level 3 conditional use permit, the Planning Commission shall conduct a review in accordance with this Subsection and shall report its findings and recommendations to the Emery County Commission.

#### **10-4-6 County Commission Review**

10-4-6-1 Applications for Level 3 conditional use permits which have been reviewed and recommended by the Planning Commission, and others referred by it, shall be brought before the next regularly scheduled meeting of the Emery County Commission or such other time as the County Commission shall determine.

10-4-6-2 Before acting on the application, the County Commission shall first determine the procedural requirements for a proper review of the matter, which must include a public hearing on the matter if none has been held previously. If the Planning Commission has adopted or recommended a procedural plan for the matter, such plan may be amended by the County Commission but shall be substantially followed.

10-4-6-3 The Emery County Commission shall review and consider the report and recommendations of the Planning Commission in open session. The Chair of the Planning Commission or his assignee shall be present during such discussion to answer questions concerning the report, and the applicant shall be given an opportunity to comment on the report and to confer with the County Commissioners.

10-4-6-4 The County Commission shall be bound by the findings and recommendations of the Planning Commission, but it shall address each of them and explain on the record its reasons for varying from them in the record.

- 10-4-6-5 If issues arise before the County Commission which were not addressed in the report of the Planning Commission, the application may be remanded for a supplemental report limited to such issues only.
- 10-4-6-6 No findings shall be made, and no action taken, until the County Commission is satisfied that it has sufficient information upon which to base its actions and has made written findings, copies of which shall be delivered to the Applicant.
- 10-4-6-7 Following the adoption of its findings regarding the matter or a particular stage of the project, as the case may be, the County Commission shall take one of the following actions:
  - (a) Approve the conditional use;
  - (b) Disapprove the conditional use;
  - (c) Approve the conditional use subject to modification; or
  - (d) Where considered necessary, act to table for further consideration.

## **10-5 CONTENT OF PERMITS; CONDITIONS**

### **10-5-1 Required Contents**

Every conditional use permit issued pursuant to this Article shall be in writing with duplicate originals, and shall contain the date granted, a description of the property affected; the Zone in which it is situated; the name, address and telephone number of the Applicant; together with the following, where applicable:

- (a) A statement of the provisions in this Ordinance which authorize the conditional use permit.
- (b) A statement of compliance, setting forth the Granting Authority and the procedures followed in granting the permit.
- (c) A statement setting forth the required findings for such permit and confirming that each has been supported by reliable evidence.
- (d) A statement of the conditions under which the conditional use will operate, including any conditions which are specifically required by this Ordinance and such other conditions, if any, added by the Granting Authority in accordance with this Ordinance.
- (e) If the Permit is required to be renewed by the provisions of this Ordinance, the expiration date of the Permit.
- (f) If the Permit is for a stage in the construction of a large or complex project, it shall so state and identify the master project.

### **10-5-2 Signatures and Seal**

Every Permit issued shall contain the signatures of the Zoning



Administrator, the Chair of the Planning Commission, and, if applicable, the signature of the Chair of the Emery County Commission with the Seal of Emery County affixed; and the following statement, followed by the date of issuance and the signature of the Applicant or its legally authorized agent, and a notarized acknowledgment thereof:

*The Applicant hereby acknowledges receipt of this conditional use permit and affirms that the facts herein stated are true. The Applicant further agrees that it operate the conditional use permitted hereby at all times in compliance with the Conditions set forth herein and in accordance with the Laws of the United States of America, the State of Utah and of the County of Emery. The Applicant admits jurisdiction of the Seventh District Court of the State of Utah for purposes of enforcement of and litigation concerning this permit. If this permit expires or is revoked by the Granting Authority, the Applicant agrees to cease operations immediately until this permit is reinstated or a new permit granted. The Applicant understands that failure to comply with the conditions set forth herein may result in legal action being taken to enjoin its operations hereunder, and, if necessary, to require the restoration of such property to its condition prior to the issuance hereof. This permit and the conditions stated herein run with the land and are enforceable against all purchasers, tenants, lessees, transferees, or successors in interest to the subject property.*



## **ARTICLE XI AUTHORIZED CONDITIONAL USES**

### **11-1 General Requirements and Conditions**

The following findings are prerequisites for every conditional use permit herein, in addition to those required herein for the particular use involved:

- (a) The use is allowed as a conditional use within the Zone where it is proposed.
- (b) Taking into account the requirements and conditions of the permit, the use is consistent with the policies and goals set forth in the Emery County General Plan and the Zone in which it is proposed.

### **11-2 Level 1 Conditional uses**

The following may be granted Level 1 conditional use permits when approved pursuant to the procedures and standards in this Article:

#### **11-2-1 Gas and Oil Wells**

- (a) Definition:

Any operation utilizing equipment which advances a bore hole into strata for the purpose of discovery, development, and/or production of oil or gas.

- (b) Required Information: In addition to the information required herein for all Permit Applications, the Applicant shall submit information necessary to demonstrating compliance with the following conditions:
  - (1) Copies of Application for Permit to Drill or equivalent document filed with the primary permitting agency, and all supplemental public documents filed by the applicant with such agency.
  - (2) That plans for dealing with releases of hazardous materials in connection with the drilling or operation of the well have been prepared, furnished to the local fire, police and civil defense authorities. That equipment required by such plans is on the site. This requirement may be satisfied by a plan covering all similar activities of the applicant within Emery County.
  - (3) That the applicant has obtained a Road Encroachment Permit from the Emery County Road Superintendent for the roads to be used by it or its agents in the drilling and operation of the well.
  - (4) If the location is on private land, that the driller has the legal right to the minerals below such land and the right to enter upon it in order to drill and operate the well.
  - (5) The furnishing of supplemental information and reports as necessary to keep local officials and agencies current as to the matters addressed in the original application.

- (6) A description of the anticipated means of disposal of waste water, produced gas or oil, etc and assurance that the well will not be connected to any gathering system which has not been so approved.
- (7) If applicable assurance that a Level 2 or Level 3 conditional use permit governing a Oil and Gas Operation including a gathering system, compressors, pipelines and injection wells to serve the well in question has been approved and permitted.
- (b) Required Findings:  
Compliance with all above listed conditions , all other requirements specified in this Ordinance and any other conditions placed on the applicant by the approving agency.
- (c) Duration:  
The permit shall remain in force for so long as the well is being drilled and operated, including the closing in thereof and completion of any reclamation, provided however, that if a well permitted under these rules is capped temporarily, the Zoning Administrator shall be notified prior to placing the well back in service.

**11-2-2 Home Occupation (Business):**

- (a) Definition:  
An occupation for compensation conducted entirely within a residential dwelling.
- (b) Required Information:  
In addition to the information required herein for all Permit Applications, the Applicant shall submit information necessary to demonstrating compliance with the following conditions:
  - (1) The home business will be conducted entirely within a dwelling and will be carried on in the dwelling only by members of the residing family.
  - (2) The home business will not involve the use of any accessory buildings or yard space for storage or activities outside of the dwelling.
  - (3) There will be no facilities in the home for the display of goods or services. Any sale of goods and services shall constitute a clearly incidental part of the operation.
  - (4) No commercial vehicles will be used for the home business, except one delivery truck or van which may not exceed three-fourths (3/4) ton rated capacity.
  - (5) The home business will be clearly incidental and secondary to the use of the dwelling for residential purposes and does not change the

character of the building from that of a residential dwelling. No more than the equivalent of twenty-five percent (25%) of the ground floor area of the dwelling will be devoted to the home business. Any garage detached or attached, carport or accessory structure shall be used in such manner that does not detract from its original purpose.

- (6) Signs will be limited to one unlit sign not exceeding two hundred twenty-six (226) square inches in area and subject to all requirements listed in Article VI, Section 6-21.
  - (7) The applicant will obtain and maintain a current business license to operate within the County.
  - (8) There will be no separate entrance for the home business.
  - (9) The home business will not materially alter the outward appearance of the home, or result in other activities which are likely to disturb established permitted uses in the vicinity or depreciate surrounding property values.
- (c) Required Findings:  
Compliance with all above listed conditions , all other requirements specified in this Ordinance and any other conditions placed on the applicant by the approving agency.
  - (d) Required Conditions:
  - (e) Duration:  
For so long as the business operates in compliance with the aforesaid conditions and maintains a current Business License from Emery County.

### **11-3 Level 2 Conditional Uses**

The following may be granted Level 2 conditional use permits when approved pursuant to the procedures and standards in this Article.

#### **11-3-1 On-Premise Occupations (Business)**

- (a) Definition:  
An occupation for compensation on a lot and/or within additional accessory buildings in addition to the residential dwelling situated on the same lot.
- (b) Required Information:  
In addition to the information required herein for all Permit Applications, the Applicant shall submit information necessary to demonstrating compliance with the following conditions:
  - (1) The number of non-family members proposed to be employed in the proposed business.
  - (2) The physical appearance, traffic and other activities in connection with the on-premises occupation do not conflict with the existing

character of the neighborhood or the intent of the zone in which the on-premises occupation is operated and do not depreciate surrounding property values

- (3) The effect the proposed business may reasonably be expected to have upon the volume and flow patterns of traffic in the neighborhood and its effect upon the character of the neighborhood as a whole. In this connection, the Planning Commission shall consider the need or proposed use of commercial vehicles by the proposed business, the frequency of deliveries and the type of delivery vehicles which may be reasonably expected to come to the premises, as well as the customer traffic which is expected to be generated.
  - (4) Signs shall be allowed if located on the same lot as the premise occupation as a condition of the permit. Signs shall not exceed two in number and four feet by eight feet or 32 square feet in area and are subject to all requirements listed in Article VI, Section 6-21.
  - (5) Road access approval has been obtained from the appropriate State and/or County road authorities.
  - (6) The business does not involve the operation of a salvage yard, or junk yard, operation of more than two semi trucks, operation of an animal rendering or by-products business, or any use requiring a Level 3 approval under other provisions of this Ordinance.
  - (7) The owner of the business is personally residing on the premises and continues to do so.
  - (8) The business has obtained and maintains a current business license to operate within the County.
  - (9) The business maintains liability and casualty insurance to protect members of the public who come onto its premises.
- (c) Required Findings:  
Compliance with all above listed conditions , all other requirements specified in this Ordinance and any other conditions placed on the applicant by the approving agency.
- (d) Duration:  
For so long as the business operates in compliance with the aforesaid conditions and maintains a current Business License from Emery County.

**11-3-2 Campground and Picnic Facilities**

- (a) Definition:  
Campground: An area of land on which accommodations for temporary occupation are located or may be placed not to exceed one (1) month.

This includes, but is not limited to tents and recreational vehicles.

Picnic Facility: An area of land used for temporary day use picnicking and gatherings.

- (b) Required Information: In addition to the information required herein for all Permit Applications, the Applicant shall submit information necessary to demonstrating compliance with the following conditions:
- (1) Provide a site plan of the campground or picnic facility and a program of management, consistent with the requirements and standards of this and all other applicable sections of the Ordinance. Said plan shall show the location of all significant natural features, the location of all roads and travel ways, the location size and purpose of all structures, all areas to be used for camping, picnicking and trailer or camper parking, and shall indicate the maximum number of persons to be accommodated on the site.
  - (2) Site shall contain adequate acreage to accommodate proposed site plan and proposed density of the facility as determined by the Planning Commission.
  - (3) An accessory commercial structure may be granted as part of the permit if the Planning Commission determines the facility is directly related to the operation of the facility and is required as a necessary part of the operation.
  - (4) Such campground or campsite facility has guaranteed access by deeded easement, or the equivalent, via a right-of-way adequate to handle anticipated traffic volume.
  - (5) Adequate water rights, water supply and distribution systems, and sewage disposal systems are provided which meet Federal, State and local health, County and Planning Commission standards.
  - (6) Solid waste collection facilities and a program of disposal are provided which meet Federal, State and local health, County and Planning Commission standards.
  - (7) The design and operation of the facilities are consistent with the intent of the zone and will not significantly decrease the quality of the area through the imposition of large volumes of traffic, inappropriate density or produce levels of odor, noise, glare, light, or similar conditions which are not compatible with the character of the area.
  - (8) Signs shall be allowed if located on the same lot as the facility as a condition of the permit. Signs shall not exceed two in number and four feet by eight feet or 32 square feet in area and are subject to all

requirements listed in Article VI, Section 6-21.

(c) Required Findings:

- (1) The Planning Commission shall consider the proposed density of the facility and its potential impact on the surrounding land uses and impact on the character of the area.
- (2) Compliance with all above listed conditions , all other requirements specified in this Ordinance and any other conditions placed on the applicant by the approving agency.

(d) Duration:

- (1) For so long as the business operates in compliance with the aforesaid conditions and maintains a current Business License from Emery County.

**11-3-3 Temporary Uses**

(a) Definition:

A dwelling or structure placed on a lot or tract of land for a period not to exceed one year and shall be non-permanent in nature.

(b) Required Information:

In addition to the information required herein for all Permit Applications, the Applicant shall submit information necessary to demonstrating compliance with the following conditions:

- (1) The following uses shall be considered as temporary uses as per this Ordinance:
  - (i) Construction camps, arterial storage and structural assembly areas, earth product barrow pits and asphalt batch plants when included as an ancillary part of an approved major construction project.
  - (ii) Additional Uses as deemed appropriate by the Planning Commission.
- (2) The location of the parcel(s) to be affected. Sufficient additional information to determine the adequacy of sanitary facilities, parking needs, access roads drainage protection and similar impacts.
- (3) A program for protection and restoration or areas, systems, or facilities affected by the use or activity. (Res. 10-20-83)

(c) Required Findings:

The Planning Commission may approve said application if it finds:

- (1) That the proposed use will not create unsafe or hazardous conditions or nuisances in the area.
- (2) That the applicant has provided adequately, at his own expense, for the restoration of the site to its original condition, including clean-up



and replacement of facilities as may be necessary. (Res. 10-20-83)

(d) Required Conditions

Compliance with all above listed conditions , all other requirements specified in this Ordinance and any other conditions placed on the applicant by the approving agency.

(d) Duration:

The conditional use permit shall expire at the end of the time period stated in the permit shall not exceed a maximum of one year. However, the Planning Commission may grant up to four consecutive three month permit extensions, if the use requires.

**11-3-4 Residential Facilities for Elderly Persons**

(a) Definition:

Residential Facility for Elderly Persons - means a single-family or multiple-family dwelling unit that meets the requirements of Utah State Code Part 5 and any ordinance adopted under authority of that part. Residential facility for elderly persons" does not include a health care facility as defined by Utah State Code Section 26-21-2.

(b) Required Information:

In addition to the information required herein for all Permit Applications, the Applicant shall submit information necessary to demonstrating compliance with the following conditions:

- (1) A residential facility for elderly persons may not operate as a business.
- (2) A residential facility for elderly persons shall:
  - (i) be owned by one of the residents or by an immediate family member of one of the residents or be a facility for which the title has been placed in trust for a resident;
  - (ii) be consistent with existing zoning of the desired location; and
  - (iii) be occupied on a 24-hour-per-day basis by eight or fewer elderly persons in a family-type arrangement.
- (3) A residential facility for elderly persons may not be considered a business because a fee is charged for food or for actual and necessary costs of operation and maintenance of the facility.
- (4) the facility meet all applicable building, safety, zoning, and health ordinances applicable to similar dwellings;
- (5) adequate off-street parking space be provided;
- (6) the facility be capable of use as a residential facility for elderly persons without structural or landscaping alterations that would change the structure's residential character;

- (7) residential facilities for elderly persons be reasonably dispersed throughout the county;
  - (8) no person being treated for alcoholism or drug abuse be placed in a residential facility for elderly persons;
  - (9) placement in a residential facility for elderly persons be on a strictly voluntary basis and not a part of, or in lieu of, confinement, rehabilitation, or treatment in a correctional facility.
  - (10) If the county determines that the residential facility for elderly persons complies with the ordinances, it shall grant the requested permit to that facility.
  - (11) The use granted and permitted by this section is nontransferable and terminates if the structure is devoted to a use other than a residential facility for elderly persons or if the structure fails to comply with the ordinances adopted under this part.
  - (12) If a county has not adopted ordinances under this part at the time an application for a permit to establish a residential facility for elderly persons is made, the county shall grant the permit if it is established that the criteria set forth in this part have been met by the facility.
- (c) Required Findings:  
Compliance with all above listed conditions , all other requirements specified in this Ordinance and any other conditions placed on the applicant by the approving agency.
- (d) Duration:  
For so long as the facility operates in compliance with the aforesaid conditions and maintains all state licencing requirements.

### **11-3-5 Oil and Gas Operation**

- (a) Definition:  
Any structure, facility or activity which is constructed on or disturbs land in association with oil and gas drilling, production or waste water treatment and disposal, including but not necessarily limited to gathering and collector systems, compressors, wells, tanks, tank batteries, pits, access roads for ingress and egress and pipelines.
- (b) Required Information:  
In addition to the information required herein for all Permit Applications, the Applicant shall submit information necessary to demonstrating compliance with the following conditions:
- (1) Copies of applicable permitting documentation filed with the primary permitting agency and all supplemental public documents filed by the applicant with such agency.

- (2) Maps and descriptions of the entire operation showing the location of all physical structures and roadways (above and below the surface).
  - (3) That plans for dealing with releases of hazardous materials in connection with the drilling or operation of the well have been prepared, furnished to and approved by local fire, police and civil defense authorities. That equipment required by such plans is on the site. This requirement may be satisfied by a plan covering all similar activities of the applicant within Emery County.
  - (4) That the applicant has obtained a Road Encroachment Permit from the Emery County Road Superintendent for the roads to be used by it or its agents in the drilling and operation of the well.
  - (5) If the location is on private land, that the driller has the legal right to the minerals below such land and the right to enter upon it in order to drill and operate the well.
  - (6) The furnishing of supplemental information and reports as necessary to keep local officials and agencies current as to the matters addressed in the original application.
- (c) Required Findings:  
Compliance with all above listed conditions , all other requirements specified in this Ordinance and any other conditions placed on the applicant by the approving agency.
- (d) Duration:  
For so long as the operation continues to operates in compliance with the aforesaid conditions and maintains all state and federal licencing requirements.

**11-3-6 Travel Related Commercial Projects**

- (a) Definition: Projects containing one or a combination of gasoline service stations, restaurants, convenience grocery stores, motels, souvenir shops, recreation campgrounds vehicle courts and related recreation uses.
- (b) Required Information:  
The applicant shall submit a proposed site plan. The site plan shall consist of one or more maps or documents showing:
- (1) The location of all proposed buildings or structures on the site, with full dimensions and distances;
  - (2) The location of all parking spaces, driveways and points of vehicular ingress and egress;

- (3) The location of all proposed landscaped areas and a general description of the proposed landscape treatment;
  - (4) The location of solid waste receptacles and a description of proposed procedures for the disposal of solid waste materials;
  - (5) Approval of all applicable culinary water supply and sewage disposal systems as evidenced by letters or other documents from the health department and State Engineer, as applicable; and
  - (6) Evidence of satisfaction of all safety and environmental impact requirements (i.e. highway access permits, wetlands protection, abandoned gas tank, etc.), as applicable.
- (c) Required Findings:  
Compliance with all above listed conditions , all other requirements specified in this Ordinance and any other conditions placed on the applicant by the approving agency.
- (d) Duration:  
For so long as the applicant remains in compliance with the aforesaid conditions and requirements.

**11-3-7 Significant Sand and Gravel Operation**

- (a) Definition: A sand or gravel pit which:
- (1) Is situated on a parcel of land located 1,000 feet or less from an existing city boundary;
  - (2) Occupies or anticipates occupying an area of five (5) acres or more; or
  - (3) Utilizes reciprocating screens, crushers, washers, dryers, or similar equipment for the processing of the extracted material. (Res. 6-1-83-B).
- (b) Required Submissions:
- (1) The site plan shall consist of one or more maps or documents showing:
    - (a) The location of all proposed buildings or structures on the site, with full dimensions and distances;
    - (b) The location of all parking spaces, driveways and points of vehicular ingress and egress; and
    - (c) Evidence of satisfaction of all safety and environmental impact requirements (i.e. highway access permits, wetlands protection, etc.), as applicable.
  - (2) A transportation plan indicating the amount of proposed traffic and impact on the existing county road network; and
  - (3) If required by the Planning Commission a noise and/or dust study to

determine the impact of the operation on the surrounding land uses.

(c) Requirements for Granting Permits

Compliance with all above listed conditions , all other requirements specified in this Ordinance and any other conditions placed on the applicant by the approving agency.

(d) Duration:

For so long as the applicant remains in compliance with the aforesaid conditions and requirements. If the operation ceases for a period of over six months the Zoning Administrator shall be notified prior to the reopening of the facility to determine whether a new conditional use permit is required.

**11-3-11 Commercial Timber Harvest:**

(a) Required Information:

Applications for this permit must include:

- (1) In addition to the information required herein for all Permit Applications, the Applicant shall submit and keep current the following:
- (2) The Name, address, telephone number, and contact person of the property owner (hereinafter “the Owner”).
- (3) The name, address, telephone number, and contact person of the person or company who will conduct the proposed harvesting operation (hereinafter “the Operator”).
- (4) The name, address, telephone number, and contact person of the person or company preparing the Harvest Plan (hereinafter “the Consultant”).
- (5) The total area to be harvested, the expected volume or yield of the proposed harvesting, and the anticipated length of operations.

(b) Required Findings:

- (1) That the area to be harvested is greater than 20 acres in area and that it has not been carved out of a larger tract in order to avoid these regulations.
- (2) That a harvest plan in conformance with the Utah Silviculture Forest Water Quality Guidelines\* (hereinafter “Harvest Standards”) has been prepared and submitted to the County Planning department by the applicant, which plan has been reviewed and approved by the Division of Forestry, Fire and State Lands of the Utah Department of Natural Resources, or such other person or agency as may be designated and approved by the Countywide Planning Commission (hereinafter “the Monitor”).

- (3) That the Owner and the Operator, if not the same person or entity, have entered into an agreement with Emery County and with the Monitor to inspect and assure compliance with said harvest plan.
- (4) That the Operator has provided security acceptable to Emery County required in this Ordinance in an amount sufficient to assure the payment to the landowner of all agreed stumpage fees, monitoring fees, and to cover clean up and reclamation of the site if not completed by the Permittee at the end of operations.
- (c) Required Conditions of Operation:  
Compliance with the plan and the standards required above.
- (d) Duration:  
Such time as operations continue, including clean up and reclamation of the site.

#### **11-4 Level 3 Conditional uses**

The following may be granted Level 3 conditional use permits when approved pursuant to the procedures and standards in this Article.

##### **11-4-1 Airports**

- (a) Definitions

*Airport*: A tract of land or water that is maintained for the landing and takeoff of aircraft and for the receiving and discharging passengers and cargo and that usually has facilities for the shelter, supply and repair of planes.

*Airport Approach Zone*: An area at each end of an airport land strip or take-off strip, broadening from a width of one thousand (1,000) feet at the end of the strip to a width of four thousand (4,000) feet at a distance of seven thousand five hundred (7,500) feet from the end of such strip, its center line being a continuation of the center line of the strip.

*Airport Transition Zone* - A triangular area adjacent to each side of an airport approach zone located with reference thereto as follows: One corner of said transition zone shall be identical with the corner of the approach zone nearest to the landing strip; a second corner shall be located at the end of a line, said line extending from the end of the landing strip to a point one thousand five hundred fifty (1,550) feet from the center line of said landing strip and at right angles thereto; a third corner shall be located at a point along said approach zone boundary line, which point is seven thousand five hundred (7,500) feet distance from the first corner above mentioned.

*Airport Turning Zone*: A circular area surrounding an airport encompassing all of the land lying within a radius of two (2) miles

distance from the landing strip of an airport, except that area covered by the airport, the transition zones and the approach zones. (Res. 11-12-79)

(b) Required Information:

In addition to the information required herein for all Permit Applications, the Applicant shall submit information necessary to demonstrating compliance with the following conditions:

- (1) In any airport approach zone, no building or structure shall be erected which is more than one (1) foot in height for each fifty (50) feet said building or structure is distant from the end of the landing or take-off strip.
- (2) In any airport transition zone, no building or structure shall be erected which is more than one (1) foot in height for each seven (7) feet said building or structure is distant from the inside airport approach zone boundary.
- (3) In any airport turning zone, no building or structure shall be erected to a height greater than one hundred fifty (150) feet.

(c) Required Findings:

Compliance with all above listed conditions , all other requirements specified in this Ordinance and any other conditions placed on the applicant by the approving agency.

(d) Duration:

For so long as the applicant remains in compliance with the aforesaid conditions and requirements.

**11-4-2 Major Underground and Surface Mine Developments**

(a) Definition:

Those activities conducted on the surface of the land for the development or extraction of mineral deposits from their natural occurrence together with the appurtenant on-site support buildings, structures, and areas for the following:

- (1) Coal mines regardless of size or surface area utilized;
- (2) Uranium mines disturbing a surface area of one acre or larger; and
- (3) Any other mining operation disturbing or proposing to disturb a surface area of one acre or more or from which 500 tons or more of material are proposed to be removed during 12 consecutive months (Res. 6-1-83B).
- (4) The provisions of this Section shall apply to the opening or reactivation of a mine portal or other site which comes within the definition of a Major Underground or Surface Mine Development; the significant expansion of an existing mine development as defined

in this Ordinance; or the establishment or reactivation of a Significant Sand or Gravel Operation as defined in this Ordinance.

- (5) The provisions of this Section shall be in addition to those imposed by the State under the provisions of the Utah Mine Reclamation Act, the Utah Coal Mining Reclamation Act or other laws of similar import.

(b) Required Information:

A plan of the proposed mine development area shall be submitted. Said plan shall show:

- (1) The portal or pit area;
- (2) The location of all existing and proposed structures;
- (3) Existing and proposed storage and disposal areas;
- (4) All natural drainage channels;
- (5) A program for the maintenance of water quality and for the restoration and reclamation of the site;
- (6) Location of fee title and leased lands proposed to be served by the portals; and
- (7) An environmental impact statement which identifies and evaluates the significant impacts upon the social, economic, and natural environment of the County (Res. 11-12-79).

(c) Required Findings:

- (1) Within one year following termination of activity, the site shall be reclaimed in accordance with the approved plan. In the event that the required reclamation work has not been completed within the one-year period, the County Commission may in accordance with Article XII, Section 12-5, declare the assurance forfeited and may do the required reclamation work with proceeds from the assurance. (Res.11-12-79)
- (2) Compliance with all above listed conditions , all other requirements specified in this Ordinance and any other conditions placed on the applicant by the approving agency.

(d) Duration:

For so long as the applicant remains in compliance with the aforesaid conditions and requirements.

**11-4-3 Industrial Projects**

(a) Definition:

All land and structures occupied by a manufacturing, processing, fabrication or similar industrial activity which requires a site area of more than two acres and/or which, because of the nature of the activity, emits



fumes, smoke, noise, vibration, dust, glare or odor in amounts which are discernable beyond the limits of the site.(Res. 11-12-79)

The provisions of this Section shall be applicable to:

Structures and facilities for the manufacturing, processing, fabrication, and warehousing of goods and materials (except those complying as permitted uses under the I-1 Industrial Zone);

Automobile wrecking and salvage yards;

Areas for the loading, storage, and processing of earth products;

Electric generating plants and ancillary facilities;

Truck terminals;

Major utility transmission facilities; and

Livestock and commodity auctions.

(b) Required Information:

A site plan of the proposed industrial development shall be submitted.

Said plan shall show, where applicable:

- (1) A description of the activity(s) to be performed in the project;
- (2) The location of existing and proposed structures and their intended use;
- (3) The location of all driveways, parking areas, fences, walls and any proposed landscaped areas;
- (4) The location of any outside storage areas;
- (5) Provisions for culinary water and sewage disposal; and
- (6) The location of all natural drainage channels and other significant natural features.
- (7) An environmental impact statement which identifies and evaluates the significant impacts upon the social, economic, and natural environment of the County, when required by the County Commission. (Res. 11-12-79)
- (8) All buildings used for human occupancy shall be served by a recognized central culinary water supply system and by a sewage disposal system which has been approved in accordance with minimum health standards as established by the State and /or local health authority.
- (9) Each project shall have adequate vehicular access to an existing County road. All access ways shall be located and designed to promote safety and convenience (*Res 11-12-79*).
- (10) The County may require the submission of a performance guarantee when in its opinion, such a guarantee is necessary to insure the construction of an essential improvement of the performance of an

essential activity. The amount of such guarantee shall be as determined by the County Commission and shall be submitted in accordance with the provisions of Article XII. (Res.11-12-79)

- (c) Required Findings:  
Compliance with all above listed conditions , all other requirements specified in this Ordinance and any other conditions placed on the applicant by the approving agency.
- (d) Duration:  
For so long as the applicant remains in compliance with the aforesaid conditions and requirements.

**11-4-4 Major Utility Transmission or Railroad Projects**

- (a) Definition:  
A construction project involving the construction and operation of one or more of the following:
  - (1) Electric power transmission lines having a capacity of more than 69kv together with any appurtenant substation and/or similar ancillary facilities.
  - (2) Gas and oil transmission lines having a design pressure of 600 P.S.I. or more, or a pipe diameter of 8 inches or more together with any appurtenant pump stations and/or similar ancillary facilities.
  - (3) Water transmission pipelines having a pipe diameter of 8 inches or more together with any appurtenant pump stations and/or similar ancillary facilities.
  - (4) Conveyor belts, slurry lines, and related facilities (Permanent installation only).
  - (5) Railroad tracks and appurtenant ancillary facilities (Res. 6-1-83B).
- (b) Required Information:  
A plan of the proposed transmission project shall be submitted. Said plan shall show:
  - (1) Location and width of rights-of-way;
  - (2) Proposed location of all lines and related structures;
  - (3) Summary of all proposed clearings, access roads, road construction activity or similar activity; and
  - (4) Other data as required by the County.
  - (5) An environmental impact statement which identifies and evaluates the significant impacts upon the social, economic, and natural environment of the County. (Res.11-12-79)
- (c) Required Findings:  
Not less than 75 percent of the proposed alignment will be located within

established public road rights-of-way.

The County Commission shall set a bond that will insure installation of the project in accordance with the final plan. This bond shall be released by the Board of County Commissioners following completion of the project but only after final inspection by the County Commission, or designated agency, to determine compliance with the final plan.

The County Surveyor shall add the project to the Official Map of the County if one exists in the area of the said line, after the project receives final approval from the Legislative Body. (Res. 11-12-79)

Compliance with all above listed conditions, all other requirements specified in this Ordinance and any other conditions placed on the applicant by the approving agency.

- (d) Duration:  
For so long as the applicant remains in compliance with the aforesaid conditions and requirements.

**11-4-5 Planned Seasonal Home Developments (Mountain Home Development)**

- (a) Definition:  
A subdivision in which the roads, travel easements, water lines, and open spaces are not dedicated to the public, but are retained as private facilities, and in which the dwellings or lots are designed to be occupied only during the months of April, May, June, July, August, September, and October. A development in which the roads, travel easements, water lines, and open spaces are not dedicated to the public, but are retained as private facilities, and in which the dwellings or lots are designed to be occupied only during the months of April, May, June, July, August, September, and October.
- (b) Required Information:  
The following documentation shall be submitted as part of the application for approval:
- (i) Articles of incorporation for the Home Owners Association;
  - (ii) By-laws of homeowners association;
  - (iii) Statement of covenants, conditions, restrictions and management policies.
  - (iv) Open space agreement.
  - (v) Statement of health authority regarding water and sewage systems.
  - (vi) Conveyance of water rights to Home Owners Association. (Res. 11-12-79)
  - (vii) A plot plan indicating the following:

- (viii) Residential accessory structures.
- (ix) Common areas and recreation facilities for the use and enjoyment of the members of the development.
- (x) Fences and walls. (Res. 11-12-79)
- (c) Required Findings:

(1) Density

The maximum number of dwelling units within a seasonal home development shall be in accordance with the following schedule as determined by the County Commission upon a detailed slope analysis of the area proposed for development.

PERCENT OF SLOPE	DENSITY
0-20%	1 lot per 20 acres
20-35%	1 lot per 30 acres
35 and above	1 lot per 50 acres

(Res 11-12-

79)

(2) Design Criteria and Improvement Requirements

Development Clusters

All dwelling sites shall be located within a designated development cluster. Each cluster shall contain not less than five (5) separate building lots or sites (except for developments having fewer than five (5) building sites or lots for the entire development).

(3) Size of Dwelling Sites

Each lot or dwelling site within the cluster shall not be less than twenty thousand (20,000) square feet nor more than two and one half acres.

(4) Steep Slopes to Remain in Natural State.

All land surface having a slope of thirty (30) percent or greater shall remain in its natural state.

(5) Each Building Site to have Buildable Area

Each lot or dwelling site shall contain a buildable area of not less than twenty thousand (20,000) square feet.

(6) Street System

(i) Vehicular Access - Each lot or building site shall front on and have access to a County road or private vehicular travelway. A road or travelway shall conform to County standards and shall provide for adequate vehicular circulation within the

development.

- (ii) Grade of Roads and Travelways - No street or roadway shall have a grade of more than twelve (12) percent, except the County Commission may approve grades up to fifteen (15) percent for short stretches of roadway where the twelve (12) percent standard would result in extra earthwork and circuitous routes.
- (7) Cut and Fill Slopes - No street or roadway shall be constructed in a location or in such a manner which produces a slope face which exceeds the critical angle of repose; provided that the County Commission may approve a roadway producing such a slope face where in its opinion:
- (i) a roadway is necessary to the development, and the proposed road follows the most appropriate alignment.
  - (ii) the roadway and slope will not produce an undue hazard on the environment or adjacent properties.
  - (iii) all practical measures to reduce the slope angle or to prevent the soil from moving under the force of gravity until the vegetative material becomes re-established shall be employed to stabilize the slope.
- (8) Water Supply and Water Rights
- (i) Each dwelling within the development shall be served by an approved water system. Plans for said system shall be submitted to the State Health Department through the County health authority and approved as evidenced by a letter of feasibility from said State agency.
  - (ii) Title to the water rights for domestic purposes in the amount necessary to meet the requirements of the letter of feasibility shall be held by the home owners association.
- (9) Sewage Disposal
- The planned seasonal home development shall be served by a central sewage disposal system or by an individual waste water disposal systems which have been approved by the County health authority as evidenced by a written statement therefrom. Where individual disposal systems are to be used, evidence of the suitability of each dwelling site within the cluster to accommodate said individual system shall be submitted at the time of application, and no development shall be approved which contains one or more dwelling sites for which said individual systems are determined to be

unsuitable.

(10) Open Space

Open Space areas to be designated - All land not included within building sites or used for travelways or developed common facilities shall be designated as natural open space for the common use of the occupants of the development.

(11) Open Space Preservation Agreement

As assurance that the designated area will remain as open space, the developers shall execute an open space preservation agreement with the County, in which the developer agrees for himself and his successors and assigns to refrain from excavating, making additional roadways, installing additional utilities, constructing dwellings or other structures on the designated areas without prior approval of the County through an amendment to the plan.

(11) Flood Plan - All flood plain areas and floodways, if any, shall be included as part of the common open space. (Res. 11-12-79)

(12)

(c) Required Findings:

Compliance with all above listed conditions , all other requirements specified in this Ordinance and any other conditions placed on the applicant by the approving agency.

(d) Duration:

For so long as the applicant remains in compliance with the aforesaid conditions and requirements.



**ARTICLE XII  
PERFORMANCE GUARANTEES**

**12-1APPLICATION**

Wherever a performance guarantee is required under the terms of this Ordinance, said guarantee shall be submitted in conformance with this Article. *(Res. 11-12-79)*

**12-2TYPE AND AMOUNT OF GUARANTEE**

The performance guarantee shall be one of the following:

1. A deposit of cash in a separate escrow account in an amount not less than 125 percent of the estimated cost of performing the work for which the guarantee is requested as determined by the County. Said account shall be established in such a manner than any released therefrom shall require the advance written consent of the County. Any interest derived from the account shall be the property of the developer.
2. A performance bond in an amount not less than 125 percent of the estimated cost of performing the work for which the guarantee is required, as established by the County.
3. Clear title to property having a present market value, as established by an independent appraisal, of not less than 200 percent of the estimated cost of performing the work for which the guarantee is required, as determined by the County. *(Res. 11-12-79)*

**12-3DURATION OF GUARANTEE**

The duration of the performance guarantee shall be for the applicable period of time specified for each particular type of development or activities. Said period shall begin on the date of final approval by the County. *(Res. 11-12-79)*

**12-4FINAL DISPOSITION AND RELEASE**

At the completion of the work, or not less than ten (10) days prior to the release date of the bond or other assurance, the developer shall submit to the County Engineer one copy of a Certificate of Compliance. Following receipt of the certificate the County Engineer shall make a preliminary inspection and shall submit a report to the chairman of the County Commission setting forth the conditions such facilities. If the condition of said improvements or activities for which the guarantee is required are found to be satisfactory, and all liens are paid, the chairman shall authorize release of the guarantee. If the condition of material or workmanship shows unusual depreciation or does not comply with the acceptable standards of durability or if any outstanding liens are not paid, or the terms of the guarantee have not been satisfied, the matter shall be referred to the County Commission, and in accordance with the provisions of 12-5, the Commission may declare the developer in default. *(Res. 11-12-79)*

**12-5DEFAULT**



Where in the opinion of the County Commission a developer fails or neglects to satisfactorily install the required improvements or make required corrections, or to pay all liens in connection with said improvements, or otherwise fails in carrying out the activity for which a bond was required, the Commission may, after a public hearing with due notice on the matter, declare the performance guarantee forfeited and thereafter may install or cause the required improvements to be installed using the proceeds from the guarantee to defray the costs.

**12-6PARTIAL RELEASE PERMITTED**

Where the guarantee is required to insure the timely installation of improvements, the County may authorize a partial release(s) of the performance guarantee in accordance with the following schedule:

Percent of Work Complete	Percent of Total Guarantee Amount Eligible for Release
25	25
50	45
75	70
100(upon satisfactory final inspection)	100

*(Res. 11-12-79)*

*[End of page]*



## **ARTICLE XIII – SUBDIVISIONS**

### **13-1 INTENT AND PURPOSE**

#### **13-1-1 Intent:**

It is the intent of the County Commission through the adoption of this Article to more fully avail itself of the power granted under 17-27-601 et. Seq. UCA, relating to the subdivision of land and to do so in a manner which will best promote the health, safety, morals, convenience, order, prosperity, and general welfare of the present and future inhabitants of the county including among other things, efficiency and economy in the process of development, lessening congestion in the streets, securing economy in government expenditures, and protection of both urban and non-urban developments. Furthermore, nothing in this Article shall conflict purposes listed in 17-27a-102 UCA.

#### **13-1-2 Purpose**

The purposes in adopting this Article shall be:

1. To facilitate the orderly development of the County.
2. To implement the County's Major Street Plan.
3. To facilitate the development of a safe and efficient street system.
4. To facilitate the orderly transfer of the ownership of building sites in a manner consistent with state law.
5. To facilitate the provision of adequate water, sewer, drainage, utilities, fire protection, and other services to developing areas of the County.
6. To establish the rights, duties, and responsibilities of subdivides with respect to the development of land within the County.

### **13-2 SUBDIVISION PLANS AND PLATS REQUIRED – EXCEPTIONS**

#### **13-2-1 Subdivision Plats Required – To be Recorded**

No ~~P~~ person shall subdivide any tract of land within the unincorporated portion of the County; nor shall any person sell, exchange, purchase, or otherwise convey or make an agreement to sell, exchange, purchase, or otherwise convey, a parcel of land which is part of a larger tract, if such sale or agreement would have the effect of creating a subdivision as defined by this Ordinance, unless and until a final plat, prepared in accordance with the provisions of this Ordinance shall have been first approved by the Planning Commission and County Commission and recorded in the Office of the County Recorder.

#### **13-2-2 Exemption From Subdivision Plat Filing Requirement**

Any owner or agent of any owner of real property who seeks to ~~partition~~ subdivide land without recording a plat by virtue of the exemption for agricultural, commercial, manufacturing, and industrial land, shall first acquire a waiver on forms furnished and

signed by the County Zoning Administrator. The Zoning Administrator shall approve said waiver upon satisfactory completion of the application form by the applicant, including, in the case of agricultural land, the recording of satisfactory deed covenants precluding the residential or other non-agricultural use of the land until the recording of a properly approved subdivision plat.

Any sale or other transfer of a parcel of land which has been subdivided into two or more parcels without the owner or agent of the owner first having obtained a waiver from the Zoning Administrator or having recorded an approved subdivision plat, shall be considered prima facie evidence of the illegal subdivision of land and a violation of 13-2 of the Ordinance, and any lot so created shall not qualify as a zoning lot as defined by this Ordinance. Qualification under these provisions shall not constitute a waiver of other requirements, including, but not limited to health, zoning, and building permit requirements.

Notwithstanding the forgoing provisions of this section, in accordance with 17-27a-605 et. Seq. UCA, a MINOR SUBDIVISION as described in section 13-7 of this Ordinance, of less than 5 lots may be approved without a plat provided a subdivision:

1. is not traversed by the mapped lines of a proposed street as shown in the general plan and does not require the dedication of any land for street or other public purposes;
2. has been approved by the culinary water authority and the sanitary sewer authority;
3. is located in a zoned area; and
4. conforms to all applicable land use ordinances or has properly received a variance from the requirements of an otherwise conflicting and applicable land use ordinance, and
5. the land use authority certifies in writing that the county has provided notice thereof as required by this ordinance.

### **13-3 PROCEDURE FOR APPROVAL OF A SUBDIVISION**

#### **13-3-1 Pre-Submission Conference**

Any person wishing to subdivide land within the County shall secure from the Zoning Administrator information pertaining to the requirements for subdivisions and the County's plan of streets, parks, drainage, zoning and other General Plan requirements affecting the land to be subdivided.

#### **13-3-2 Prepare Concept Plan**

The sub-divider shall then prepare a concept plan and shall submit three (3) copies of the same to the Planning Commission no less than seven (7) days prior to the next regularly scheduled Planning Commission meeting. Said plan shall be prepared in accordance with County standards. Where a sub divider owns or controls more land than he proposes to

submit for preliminary approval, the Planning Commission may require that a concept plan for the larger area be submitted. Said plan shall indicate the portion proposed to be submitted initially for preliminary approval and the portion to be held for future submission.

### **13-3-3 Obtain Planning Commission Approval of Concept Plan**

The Planning Commission shall review the concept plan and shall act to: (a) approve the plan, (b) disapprove the plan, (c) approve the plan subject to modification, or (d) where considered necessary or desirable, act to table further consideration of the plan for a determined amount of time. Approval for the concept plan shall not be construed to constitute approval of the subdivision but shall be deemed as an expression of acceptance of the basic concept and feasibility of the proposed subdivision which the sub-divider may use as a guide in the preparation of the preliminary plan.

### **13-3-4 Prepare Preliminary Plan and Improvement Drawings**

Upon approval of the concept plan by the Planning Commission, the sub-divider shall prepare a preliminary plan of the subdivision and shall submit three (3) copies of the same to the Planning Commission not less than seven (7) days prior to the next regularly scheduled Planning Commission meeting. Said plan shall contain:

1. A preliminary layout plan.
2. Preliminary drawings showing the location and type of proposed public improvements, and, as applicable, evidence of suitability of the soil for septic tank purposes.
3. Copies of proposed documents, when applicable.
4. Evidence of payment of preliminary review fee.
5. Evidence of ability to satisfy water requirements.
6. Any other material or information required by the Planning Commission.

All plans, documents and other data shall be prepared in accordance with County standards. Failure to submit all required material prepared in accordance with said standards shall be grounds for denial.

### **13-3-5 Obtain Planning Commission Approval of Preliminary Plan**

The Planning Commission shall review the preliminary plan and shall act to: (a) approve the plan, (b) disapprove the plan, (c) approve the plan subject to modification, or (d) where considered by the Planning Commission to be necessary or desirable, act to table further consideration of the plan for a determined amount of time. Approval or denial of the plan shall be based upon compliance with the General Plan and upon a finding of conformance with the submission guidelines set forth in Section 13-6 of the Article. The action of the Planning Commission shall be written on the face of two copies of the plan, one of which shall be retained in the files of the Planning Commission, and one of which

shall be returned to the sub-divider. If the plan is disapproved, the Planning Commission shall express its reasons therefore to the sub-divider.

Upon approval of the preliminary plan, the Planning Commission shall be committed to grant approval of the final plat, subject to full compliance with any conditions attached, unless, in the opinion of the Planning Commission, preliminary approval was given based on inaccurate or incomplete representations or that changes have occurred in conditions relating to the property, not known or present at the time approval was given, which would result in a violation of applicable provisions of Section 13 of this ordinance, if the project were carried out as initially approved. Approval of the preliminary plan shall remain valid for a period of one year. Said approval may be extended or reaffirmed by the Planning Commission, for a period not to exceed one year, upon receipt of a written request from the owner.

### **13-3-6 Prepare and Submit Final Plat, Engineering Drawings, and Documents to Planning Commission.**

Upon approval of the preliminary plan by the Planning Commission, the sub-divider shall prepare the final, plat, final engineering drawings, and documents and shall submit copies of the same to the Planning Commission not less than seven (7) days prior to the next regularly scheduled Planning Commission meeting said plats, drawings, and documents shall include:

1. The original mylar and three (3) prints of the final plat.
2. Final engineering drawings.
3. Documents indicating full compliance with the water and sewer requirements for each lot.
4. An itemized estimate of the cost of constructing all required improvements, prepared by or under the direction of the County Surveyor. This estimate shall be used as the basis for setting the amount of the performance guarantee.
5. Final copies of performance guarantee documents.
6. A title report, covering the property within the plat area, to identify all interests in the property which may have an effect on the title, and to establish that the land proposed for subdivision is free of boundary conflicts. The purpose of this requirement shall be to ensure that purchasers of lots will have a clear and marketable title.
7. Final copies of all other required documentation, when applicable.
8. Evidence of payment of final plat checking and recording fees.

### **13-3-7 Planning Commission Takes Action on Final Plat**

The Planning Commission shall review the final plat, final engineering drawings, and other required submissions, and shall act to: (a) approve the plan, (b) disapprove the plan, (c) approve the plan subject to modifications or (d) where considered necessary or proper by the Planning Commission, act to table further consideration of the plan for a determined amount of time. If disapproved, the Planning Commission shall state its

reasons therefore to the sub-divider. Upon approval by the Planning Commission, said Commission shall sign the plat and shall forward the plat to the County Commission with the recommendations that the plat be approved and the proposed dedications accepted.

### **13-3-8 Sub-divider Post Performance Guarantee**

Upon approval by the Planning Commission, the sub-divider shall post a bond or other financial assurance guaranteeing construction of the required improvements. Said performance guarantee shall be in conformance with the provisions of Article XII of this Ordinance.

### **13-3-9 County Commission Takes Action on Final Plat**

Upon receipt of the final plat, bearing all required signatures, and also submission of evidence of posting of the performance guarantee, the County Commission shall consider the plat and performance guarantee and shall act to approve or disapprove the plat or approve it with modification. If disapproved, the County Commission shall state its reasons therefore to the sub-divider. If modifications are required such modifications must first be referred to and accepted by the Planning Commission.

If approved, the plat shall be signed by the Commission and returned to the Zoning Administrator for recording. The signature of the County Commission on the final plat shall constitute final approval.

### **13-3-10 Final Plat Recorded in Office of County Recorder**

Upon receipt of the executed final plat and the receipt of all outstanding submissions and fees, the Developer shall submit said plat for recording in the Office of the County Recorder.

## **13-4 DESIGN AND DOCUMENTATION REQUIREMENTS**

The layout and design of all subdivisions and the content of required submissions shall be in accordance with the following and also with the minimum county standards and specification as provided under 13-6 provided, in the event of conflict the more stringent shall prevail.

### **13-4-1 General Design – Access**

1. The overall design shall provide good vehicular access and circulation.
2. Each lot shall abut upon and have access to a designated county road in conformance with the frontage requirements for the zone in which the subdivision is located.
3. The design shall recognize and accommodate significant environmental conditions including but not limited to drainage channels, flood plain area, canals, wetland, and adverse soil.



4. Each lot within the subdivision shall contain a buildable area which is sufficient in size to accommodate the dwelling or other main building and also all attendant facilities (i.e. septic tank filter field). The buildable Area shall not be situated within a designated flood channel or a recognized flood hazard area.

#### **13-4-2 Conformity With Zone Requirements**

Each lot in the subdivision shall conform to the zone requirements for the zone in which the subdivision is located.

#### **13-4-3 Culinary Water**

Satisfactory evidence of an adequate supply of culinary water for each lot shall be submitted with each application for approval of a subdivision as follows:

For subdivision utilizing central system:

- A. Written evidence from a recognized water supply agency indicating:
  1. that the agency agrees and has the ability to supply the residential culinary water to the development,
  2. that the petitioner has satisfied all requirements of said agency relating to conveyance of water rights, payment of fees, etc. and
  3. each lot has been granted a permanent, non-revocable water connection.
- B.
  1. Evidence satisfactory to the County that the transmission lines, storage reservoirs, and other system elements have adequate pressure and capacity to meet culinary water needs of the project at levels not less than specified by the State Health Department.
  2. Individual well or spring system: Approval from the State Engineer, authorizing the use of water from the proposed source for domestic purposes: also, written evidence to the effect that water from well sources or spring is available in adequate quantities and conforms to minimum quality standards for culinary use as evidenced by a written statement from the health authority.

#### **13-4-4 Domestic Sewage Disposal Requirements**

Each lot shall be served by a central sewage disposal system or by individual waste water disposal systems which have been approved by the local health authority as evidenced by a written statement there from. Where individual disposal systems are to be used, the statement from the health authority shall indicate that tests were conducted on each lot and that all lots meet minimum standards for individual waste disposal systems. No final plat shall be approved which contains one or more dwelling sites for which individual systems are determined to be unsuitable.

### **13-4-5 Roads**

Residential (minor) roads within the subdivision shall have a right-of-way width or not less than 60 feet.

Collector and arterial roads shall have a right-of-way width of not less than 80 feet or as set forth on the Major Street Plan whichever is greater.

All roads shall be designed to provide for safe and convenient access to adjacent property and for snow removal and the disposition of surface water. The layout and improvement of all roads shall be in accordance with the applicable cross-section and construction standards of the County.

### **13-5 PROJECT EVALUATION GUIDELINES**

In conducting its review of the proposed subdivision the Planning Commission and County Commission shall be guided by the following evaluation criteria:

1. Are the plans and documents submitted sufficiently detailed to permit a proper consideration of the project and do they conform to County standards as to content?
2. Does the proposed development conform in all respects to the design standards for subdivision?
3. Are there any conditions present which would render part or all of the sites unsuitable for housing purposes and have these conditions been accommodated in the plan?
4. Will the proposed arrangement of lots and roads produce convenient access and circulation under all weather conditions and not result in the imposition of an undue financial burden upon the County?
5. Will the project, if developed, be consistent with the purpose and intent as stated under 13-1 of the Ordinance?

The Planning Commission may require changes in the plan in order to more fully accomplish the objectives of the zone and this Article, including, but not limited to, the redesign of the road system, provision for extension of the road system into adjacent properties, and the relocation of lot boundary lines, and increase in water line size above the minimum.

### **13-6 IMPROVEMENT REQUIREMENTS**

The developer shall be responsible for installation of all required improvements. Said improvements shall meet minimum County standards and specifications and shall be completed within one (1) year from the date of final approval of the subdivision, except that upon a showing of good and sufficient cause, the County Commission may grant an extension of the time limit not to exceed six (6) months. Financial assurances guaranteeing the construction of all required improvements shall be required as a

condition of approval. Said assurances shall be in accordance with the provisions of Article XII.

### **13-6-1 Streets and Roads**

All streets and roads shall be improved in conformance with the applicable cross-section and construction standards as adopted by the County Commission.

### **13-6-2 Culinary Water**

#### A. Subdivisions utilizing a central water system:

1. Both “offsite” and “onsite” water mains of not less than 6 inches in diameter shall be installed in such a way that each lot may be served therefrom.
2. Water service laterals shall be installed from main line to the outer edge of any road proposed to be dedicated to the County. Said lateral shall include the installation of a meter box and meter setter.
3. The water flowing to said system shall be from a source and through lines which are sufficient in size to provide a volume of flow and level of pressure adequate to meet State Health standards.
4. The quality of materials and procedures of construction shall conform to County standards.
5. Applicant shall provide documentation of culinary service connection(s) from a public water system monitored in compliance with the Utah Safe Drinking Water Act

#### B. Subdivisions utilizing individual wells.

1. Construction of wells will be required as a condition for granting of a building permit.
2. Applicant shall provide documentation of approval from Utah Division of Drinking Water and Division of Water Rights.

### **13-6-3 Sewers**

#### A. Subdivisions utilizing central collection and disposal systems:

1. All systems and facilities shall conform to State Health standards.
2. Applicant shall provide documentation of connection to public sewer system or other disposal system approved pursuant to state law

#### B. Subdivisions utilizing individual waste water disposal systems:

1. Construction of disposal system will be required as a condition for the granting of a building permit.
2. Applicant shall provide documentation of approval of septic system or other approved waste disposal system from the Utah Department of Health.

#### **13-6-4 Permanent Survey Monuments**

No less than two permanent survey monuments shall be installed in each subdivision. The location of the monuments shall be shown on the final plat. Also, all corners on the subdivision and all lot corners in the subdivision shall be marked.

#### **13-6-5 Electric**

Electric power shall be available to each lot. All lines and appurtenant facilities shall be located underground except when the sub-divider can show that the placement underground is not physically feasible.

#### **13-6-6 Telephone Lines**

Telephone lines shall be available to each lot. All lines and appurtenant facilities shall be located underground, except when the sub-divider can show that the placement underground is not physically feasible.

#### **13-6-7 Street Signs**

Street signs shall be installed at all locations indicated on the preliminary plan. The location and design of said signs shall conform to minimum County standards.

#### **13-6-8 Storm Drains and Facilities**

Pipes and other facilities for the disposal of storm water shall be installed where required by the County. The location, size, and design of said facilities shall be in accordance with the County's storm water disposal plans and standards or as directed by the County Surveyor.

### **13-7 MINOR SUBDIVISION**

#### **13-7-1 Purpose**

Notwithstanding Section 13-3 above, the following requirements are enacted and enforced to allow the development of Minor Subdivisions in the unincorporated portions of Emery County. The intent of a Minor Subdivision is to allow individual lots and small subdivisions to be processed in a timely fashion while ensuring the needs of the public at large are met.

#### **13-7-2 Minimum requirements**

A Minor Subdivision shall meet the following minimum requirements in order to be considered a minor subdivision:

1. Minor Subdivisions shall be allowed only within the A-1 zone in Emery County
2. Not more than five lots may be created;
3. Each lot shall contain at least 2 acres;
4. Meets and Bounds are acceptable legal descriptions for Minor Subdivisions, so long as they have been provided by a certified Surveyor and a record of Survey is filed in accordance with UCA 17-27a-605(2)(6); however Plats and Plat Maps are acceptable and preferred;
5. The division does not result in remnant land (land that can not be developed due to size, set backs, etc) that did not previously exist;
6. Minor Subdivisions do not require addition of infrastructure above and beyond that which is available generally in the surrounding properties, i.e., curb, gutter, sidewalk would only be required if the adjoining properties have those amenities at the time of application;
7. Developer may present a development plan that, upon approval by the Land Use Authority, allows for staged development – lots may be developed individually, in groups or all at once, so long as the plan and the accompanying schedule is met;
8. Each lot shall have the required frontage on an improved public street, county road or public highway as set forth in this ordinance;
9. Each lot shall meet all other applicable requirements (i.e., setbacks, construction standards, etc.) as set forth in this Ordinance;
10. Streets and roads – While “gravel roads” are an acceptable construction medium for the surface of streets and roads, all streets and roads shall be improved in conformance with the applicable cross-section and construction standards as adopted by the County Commission. Residential (minor) roads constructed within the subdivision shall have a right-of-way width or not less than 60 feet. Streets and roads are defined as such if the roadway serves three or more lots in a subdivision.
11. Driveway Access - The minimum width of a driveway shall be twelve feet (12'). The maximum grade of a driveway shall not exceed ten percent (10%). Twelve percent (12%) grades may be allowed for up to but not to exceed two hundred fifty (250) lineal feet. Any driveway longer than three hundred feet (300') shall have either a designated “turn around” area large enough for a forty foot (40') emergency vehicle to make a complete turn, or shall have twenty four (24') wide passing areas, at least sixty feet (60') in length every five hundred feet (500'). A driveway is defined as such if it serves two or less lots within a subdivision.

### **13-7-3 Granting Authority**

The Land Use Authority for a Minor Subdivision is the Zoning Administrator or his / her appointed designee. Notwithstanding this rule, the Zoning Administrator or their designee may forward any application on to the County Planning and Zoning Commission for approval by a majority vote of the Commission Members.

### **13-7-4 Appeal Authority**

The Appeal Authority for a Minor Subdivision is the Planning and Zoning Commission. If the Minor Subdivision was approved by the Planning and Zoning Commission because

the Zoning Administrator forwarded the application pursuant to section 13-7-3, the Emery County Commission shall serve as the appeal authority.

## **13-8 PROCEDURE FOR APPROVAL OF A MINOR SUBDIVISION**

### **13-8-1 Prepare Concept Plan**

The applicant shall prepare a concept plan and shall submit two (2) copies of the same to the Zoning Administrator. Said plan shall include;

1. A development plan which will include a description of the proposed use including proposed excavation, construction, timelines and such other information as may assist the Zoning Administrator or other Granting Authority in reviewing the application;
2. Proof of ownership or other legal right entitling the Applicant to conduct the proposed use on the property;
3. A surveyed, legal description of the property for which the permit is sought, and/or a copy of the recorded plat showing the property, and a vicinity drawing or plan showing roads and other landmarks which will aid in identifying the property;
4. A drawing including location of structures in relation to property lines, roads, water utilities, electrical utilities and wastewater facilities (including location of septic field and alternative);
5. A letter from Culinary Water System operator verifying water connection ownership for each individual lot in the subdivision;
6. An encroachment permit or letter from the County or State road department granting access to the property on the associated roadway;
7. A letter of approval from the department of health approving a septic system and providing appropriate design for proposed structures;

Where an applicant owns or controls more land than he proposes to submit for preliminary approval, the Zoning Administrator may require that a concept plan for the larger area be submitted. Said plan shall indicate the portion proposed to be submitted initially for preliminary approval and the portion to be held for future submission.

### **13-8-2 Initial Zoning Administrator Review**

The Zoning Administrator shall examine the application to determine:

1. If the application is complete;
2. If the proposed use qualifies as a Minor Subdivision under this Ordinance; and
3. The amount of the application fee according to the current fee schedule.

Following such examination, the Zoning Administrator shall give notice to the applicant of the following, as applicable:

1. If the application is incomplete, what information is necessary to complete it;
2. If the proposed use meets the basic requirements for a Minor Subdivision;

Upon the submission of a completed application, a determination that the proposed use qualifies as a Minor Subdivision, and payment of the required fees, the Zoning Administrator shall, within 10 days, respond to the applicant that the application is administratively complete.

### **13-8-3 Zoning Administrator Approval Process**

No findings shall be made, and no permit issued, until the Zoning Administrator is satisfied that he / she has sufficient information upon which to base his / her actions. The Applicant shall be permitted to address or communicate with the Planning and Zoning Administrator and answer questions concerning the matter, and to submit amendments to the application addressing concerns and issues which may arise, and to suggest solutions to problems identified in the proceedings.

Upon completion of the review, the Zoning Administrator shall take one of the following actions, based upon its findings in the matter:

- a) Approve the Minor Subdivision;
- b) Disapprove the Minor Subdivision;
- c) Approve the Minor Subdivision subject to modification; or
- d) Where considered necessary, forward to the Planning and Zoning Commission for further consideration.

Upon approval, building permits must be purchased and construction must begin within 180 days or the approval of the Minor Subdivision shall expire.

## **13-9 GENERAL REQUIREMENTS**

### **13-9-1 Standards and Specifications**

The Planning Commission shall prepare standards and specifications for the content of subdivision plans and for the layout, design, and construction of subdivisions and required improvements. Said standards and specifications shall be adopted by resolution of the County Commission. All such requirements shall be considered the minimum standards which must be met and shall apply to all subdivisions.

### **13-9-2 Amended Plats**

No change shall be made in a plat which has received final approval unless and until approval for said change has been given by both the Planning Commission and County Commission. Any change in a subdivision for which a final plat has been recorded shall first require that the plat be vacated in accordance with the applicable provisions of the Utah Code and a new plat of the territory approved and filed in accordance with the procedures and requirements of the Ordinance.

### **13-9-3 Work To Be Done By Engineer Or Surveyor**

All engineering work must be done by, or under direction of, a Professional Engineer registered in the State of Utah. All land survey work must be done by, or under the direction of, a Land Surveyor registered in the State of Utah.

### **13-9-4 Variances**

Variances to the strict application of the standards and specifications adopted pursuant to Section 13-7-1 may be authorized by the County Commission after recommendation from the Planning Commission. Such variances will be granted only upon a finding that, because of topographic or other unique physical condition, the standard appealed from:

1. Is unnecessary for the proper development of the subdivision and will not be required in the future.
2. Would cause an unreasonable hardship if adhered to, and
3. May be granted without destroying the intent of the standard or this Ordinance.

Any variances so authorized shall be stated on the final plat.

### **13-9-5 Review Fees**

All costs for processing of subdivision proposals and the administration of the Ordinance shall be borne by the sub-divider. The County Commission, may be resolution establish fees for the purpose and provide for the assessment and collection thereof.

### **13-10 ENFORCEMENT**

No officer of the County shall grant any permit or license for the construction or use of any building or land within a subdivision unless and until said subdivision has been approved and recorded in accordance with the requirements of this Ordinance.

Whoever, being the owner or agent of the owner of any land located in a subdivision within the County, transfers or sells such land without have received approval in accordance with the provisions of this Ordinance, shall be guilty of a misdemeanor for each lot so transferred or sold and the description by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring shall not exempt the transaction from such penalties. In addition, the County may enjoin such transfer or sale or agreement by action for injunction or may recover the said penalty by civil action (UCA 17-27-21).

Also, the County may, in addition to other remedies provided by law, institute injunctions, mandamus, abatement, or other appropriate action or proceeding to prevent, enjoin, abate or remove any unlawful building, use or act. (See UCA 17-27-23.)



**APPENDIX 1  
RESOLUTIONS AND ORDINANCES AFFECTING  
THE EMERY COUNTY ZONING ORDINANCE**

<b>Document Number</b>	<b>Type of Document</b>	<b>Title</b>
1968-1	Resolution	Creation of Planning Commission 11-12-68
1968-2	Resolution	Adopting Temporary Zoning Regulations 11-12-68
1-70	Resolution	Zoning Resolution of Emery County 10-14-70
3-70	Ordinance	Ordinance Relating to Regulations pertaining to Conventional Subdivisions and to Mountain Home development
5-14-75	Resolution	Dealing with flood or mudslide areas and Zoning Administrator's and Building Inspector's Responsibilities.
5-19-75	Resolution	Building Permit System and Review Procedure
5-10-76	Ordinance	Changing Zone of Land to I-1 and H-1 (Sinbad Land Corporation) (note 8/96...this is now in Ferron City Limits)
12-13-76	Ordinance	Zone Change to I-1 Zone (UP&L Training Center)
12-13-76	Ordinance	Zone Change to I-1 Zone (Mine Hydraulics) (note 8/96....this in now in Castle Dale City Limits)
4-6-77	Ordinance	Changing Zone of Land to I-1 (Montell Seely - Lowdermilk) (Note 8/96: This is now in Castle Dale City Limits)
6-1-77	Ordinance	Requiring the Purchase of Building Permits and Permit Fees
2-1-78	Resolution	Amending Zoning Resolution placing Non-farm residential growth in cities. Mobile Home min. size 800 sq. ft.
11-16-78	Resolution	Amending Zoning Resolution Farm care dwellings, area requirements, schedule of assessed values
11-12-79	Resolution	Amendment to Zoning Resolution. Zones Established
12-11-79	Ordinance	Business Licensing
12-79	Resolution	Copy of the Revised Zoning Resolution of Emery County (initially adopted as Resolution 1-70) showing the changes made therein up to

		and including 11-12-79. Printed in Book form by authority of County Commissioners
7-9-80B	Resolution	Approving Large Scale Development and Amending Official Zone map (Hidden Valley Mine) Overlay Zone No. 1
7-9-80F	Resolution	Establishing Fees and charges relating to the development plan reviews, construction permits, and inspection fees
7-9-80A	Ordinance	General Business Licensing Ordinance of the County of Emery
12-3-80	Ordinance	Amending portions of ordinance 7-9-80A the "General Business License of the County of Emery"
11-4-81	Resolution	Amend Zone Map. Large Scale Industrial Project. Zone change to I-1 zone. (Ward Auto Storage and Wrecking)
4-7-82	Resolution	Amending Resolution 7-9-80F on Plan Review and Processing Fees
5-5-82A	Resolution	Approving Large Scale Utility Transmission. Amending Zone Map (Hunter Plant) Overlay Zone No. 4
5-5-82B	Resolution	Approving Large Scale Utility Transmission. Amending Zone Map (Cottonwood Diversion to Hunter Plant) (Overlay Zone No. 5)
5-5-82C	Resolution	Large Scale Mine Development Amend Zone Map (Co-op Mine) Overlay Zone No. 6
9-1-82B	Resolution	Large Scale Mine Development Zone Change to M & G-1 (Sinbad Land Co.) (rescinded...see Res. 8-6- 86)
10-20-82	Resolution	Vacate subdivision "Elk Springs Plat A" (East Mountain)
1-5-83A	Resolution	Amending the Official Zone Map Large Scale Industrial (Skyview Oil Co.) Overlay Zone No. 8
6-1-83B	Resolution	Zoning Resolution for Utilities and Gravel Pits
10-20-83	Resolution	Amending Zoning Resolution Temporary Uses
7-19-84A	Resolution	Amending Official Zone Map to I-1 Zone (Kerwin Jensen Truck Yard)
7-19-84B	Resolution	Amend Zone Map and approving Major Surface Mine Development CE-2 Zone (Genwall)
10-3-84A	Resolution	Subdivision Ordinance - Amending Zoning

		Resolution
11-7-84A	Resolution	Approving Large Scale Industrial Project and Zone Overlay _____. (Hunter Unit #3)
11-7-84B	Resolution	Approving Large Scale Industrial Project and Zone Overlay No. _____. (Hunter Unit #4)
8-15-85	Resolution	Amending Official Zone Map and approving Large Scale Industrial Project (Wickman Mine Waste Disposal Area) Overlay No. _____
5-7-86	Resolution	Major Surface Mine Development (Lowdermilk) (Overlay Zone No. 86-1)
8-6-86	Resolution	Rescinding Conditional Use permit for Sinbad Land Company approved as a Large-Scale development in Resolution 9-1-82B
11-20-86B	Resolution	Amend Zoning Resolution and change zoning to I-1 zone (UP&L property near the road to Cleveland)
7-19-89F	Resolution	To hold a public hearing on approval of a Large Scale Industrial Project (UP&L Hunter and Huntington Plants)
9-6-89	Resolution	Amending Zone Map and Approving a large scale Industrial Project (Huntington Plant mine rock disposal site) Overlay Zone No. 89-2
8-15-90B	Resolution	Gypsum Resources permits.
4-3-91B	Resolution	Temporary Use Permit for Natural Solutions
6-3-92	Resolution	Establishing HC-1 Highway Commercial Zone
4-20-94A	Resolution	Amending Zoning in A-1 Zone
6-1-94C	Resolution	Change A-1 Zone to include small industrial warehouses, definitions and some house cleaning language for over-all zoning ordinance
6-1-94D	Resolution	Changes Landfill area from MG-1 to I-1 zone and allows landfills in the I-1 zone (Landfill)
6-1-94E	Resolution	Zoning Resolution to Approve site plan for Emery Recycling
6-1-94F	Resolution	Zoning Resolution to create 80-acre building lots in CE-1zone
6-19-96B	Resolution	Amending Official Zone Map of Emery County changing area to an I-1 Zone (Emery Recycling Corporation)
6-19-96C	Resolution	Granting Approval for Large Scale Industrial Project

		(Emery Recycling Corporation)
11-20-96B	Ordinance	An Ordinance redesignating and amending the Emery County zoning Resolution, adding on premises occupation as a conditional permitted use and establishing procedures and guidelines for permitting the same.
2-18-98	Ordinance	Amending Articles I, II, III, IV, and VI of the Emery County Zoning Ordinance in order to bring the ordinance into compliance with State statute.
7-15-98	Ordinance	Amending Articles II and V of the Emery County Zoning Ordinance in order to allow non-conforming structures to be upgraded or expanded.
10-5-99	Ordinance	Reorganization of ordinance, addition of new conditional use regulations, and change in the required length of time that notices for public hearings to amend the zoning ordinance must be published. (changed from 30 days to 14 days - section 5-3-3).
3-07-00	Ordinance	Amending subsections 11-2-2-2, 11-2-3-2, 11-4-2-1, 11-4-2-3 and 11-4-4-1 and adding subsection 11-4-1, Fees and Costs.
3-07-00A	Resolution	Adopting fee schedule
11-21-00A	Ordinance	Amending Article II to include a definition for Commercial Timber Harvest. Amending Article XI to include Commercial Timber Harvest as an allowed conditional use and outline guidelines for approval.
5-15-01A	Ordinance	Amending Articles II, VI & VII and adding Correctional Facilities as a Level 3 conditional use in the A-1 and M&G-1 zones and Communication Towers as a Level 2 conditional use in all zones.
6-15-2004	Ordinance	New definitions of "agriculture" and "farms and ranches;" combined Article IX and X; redesignated parts of Article XI as Article X and renumbered sections accordingly; established point system for zoning clearances for dwellings in the A-1 Zone; eliminated irrigation water rights requirement for zoning clearance for homes in the A-1 Zone; farms and ranches made permitted uses in the A-1 Zone, deleting the "bona fide farm and caretaker dwellings

as conditional uses; established a table of permitted and conditional uses allowed in the various zones.

**APPENDIX 2  
RESOLUTION NO. 3-04-98**

**A RESOLUTION ESTABLISHING COUNTY POLICY  
WITH REGARD TO ENTRY BY  
COUNTY ZONING OFFICIALS ONTO PRIVATE PROPERTY**

WHEREAS, Section 17-27-205 of Utah Code Annotated (1953 ed.) Provides that “a planning commission or its authorized agents [hereinafter “County Zoning Officials”] may enter upon any land at reasonable times to make examinations and surveys;” and,

WHEREAS, Emery County has adopted the language of said Section 17-27-205 as part of the Emery County Zoning Ordinance; and,

WHEREAS, the County Commission finds that the language quoted above may be misinterpreted or the power thereby granted abused; and,

WHEREAS, recent amendments to the said Emery County Zoning Ordinance establish a policy of protecting private property rights;

NOW, THEREFORE, IT IS HEREBY RESOLVED as follows:

That County Zoning Officials may enter upon any private property within Emery County so long as such entry would not constitute a criminal trespass under Section 76-6-206, Utah Code Annotated.

That County Zoning Officials should otherwise enter upon private property only after reasonable notice has been given verbally or in writing to the owner of the property and, where applicable, to any occupants thereof legally and peaceably in approximate time proposed for accomplishing such entry. If such notice is given and the owner or occupant protests, the proposed entry shall not be made unless and until the matter has been presented to and authorized by the Planning Commission and the affected owner or occupants given opportunity to appear and state the grounds for their objections.

That, notwithstanding anything herein to the contrary, county Zoning Officials are authorized to enter upon any land at reasonable times to make examinations and surveys when:

Such entry is undertaken for the purpose of inspection of construction in progress pursuant to a regularly-issued building permit or attaching notice of violations of building codes; OR

The purpose of such entry, such as verification of the location of property lines and easements, setbacks, height of structures, etc., can be accomplished without entry into buildings or spaces not open to public view and without materially disturbing surface conditions; OR

There exists grounds for reasonable suspicion that activities or conditions exist on the property which pose an immediate danger to the health, safety, peace or welfare of the people of Emery County, their property, or the environment.

APPROVED and entered into this 4<sup>th</sup> day of March, 1998

EMERY COUNTY COMMISSION

By: /s/ Randy Johnson, Chairman

ATTEST:

/s/ Bruce C. Funk, Clerk/Auditor

**APPENDIX 3 - FEE SCHEDULE**  
**RESOLUTION NO. 3-07-00A**  
**A RESOLUTION ADOPTING A FEE SCHEDULE**  
**FOR CONDITIONAL USE PERMITS**

Whereas, Section 11-4-1] [Now 10-4-1] of the Emery County Zoning Ordinance provides that applicants for conditional use permits shall pay fees “determined by reference to a Fee Schedule which shall be adopted, and amended from time to time, by resolution of the Countywide Planning Commission and approval by the Emery County Commission; and

Whereas, this matter has been considered by the Countywide Planning commission and the schedule which is attached hereunto, entitled *Conditional Use Permit Fee Schedule*, has been prepared and presented to said commission; and

Whereas, said schedule is based upon the costs to Emery County incurred in the process of reviewing applications and creating and maintaining records thereof;

NOW THEREFORE, IT IS HEREBY RESOLVED AS FOLLOWS:

The aforementioned *Conditional Use Permit Fee Schedule* attached hereunto and by this reference incorporated herein, is approved and adopted for use by Emery County by the Countywide Planning Commission, subject to the approval of the Emery County Commission.

The aforementioned schedule shall not prevent Emery County from assessing additional costs for review as may be required under Subsection 11-4-1-2 of the Emery County Zoning Ordinance.

APPROVED and signed this 7<sup>th</sup> day of March, 2000

COUNTYWIDE PLANNING COMMISSION OF  
EMERY COUNTY, STATE OF UTAH

By: /s/ Mack Huntington, Chair

ATTEST:

/s/ Marcee Wright, Secretary

**APPROVAL BY COUNTY COMMISSION**

This matter came before the Emery County Commission on the 7<sup>th</sup> day of March 2000, at the request of the Countywide Planning Commission to approve its adoption of the attached Conditional Use Permit Fee Schedule. After consideration and discussion thereof, this Commission approved the same



unanimously.

EMERY COUNTY COMMISSION  
By: /s/ Kent R. Petersen, Chairman

ATTEST:

/s/ Bruce C. Funk, Clerk/Auditor

### Conditional Use Permit Fee Schedule

The following fees shall be charged by the Zoning Administrator for Conditional Use Applications:

**Level 1:**

Home Occupations .....	No Fee with County Business License
Gas Wells .....	\$300.00
Other: .....	\$100.00

**Level 2:**

On-premises Occupations .....	\$100.00
All Other .....	\$600.00

**Level 3:** ..... \$1,000.00

**Renewal of Permit** (where periodic review is required in the permit) .... \$75.00

**Amended applications:**

Minor Amendments* .....	No additional fee
Material Amendments, i.e. those which require additional reviews by the County-wide Planning Commission or the County Commission:	

In addition to the original fee paid:

If the permit level remains the same .....	One-half of the original fee
If the permit level is increased .....	The difference between the fee for the original level and the fee for the higher level

**Additional Costs:**

Where extraordinary expenditures are required to conduct a proper review, the applicant is responsible for such additional costs as are reasonably required and actually incurred by Emery County in reviewing the application, including, but not limited to, the fees of independent consultants and experts, the costs of special reports and studies, transportation costs, etc. Such costs shall not be incurred without prior disclosure to the applicant.

However, failure to pay such costs is grounds for denial of the application.

\* Defined as amendments which, in the opinion of the Zoning Administrator, do not contain changes sufficient to justify further reviews by the Countywide Planning Commission and/or the County Commission.