

CITY OF MOAB ORDINANCE 2019-_____
AN ORDINANCE AMENDING THE CITY OF MOAB MUNICIPAL CODE BY
ADDING A NEW CHAPTER 17.68 PLANNED AFFORDABLE DEVELOPMENT (PAD)

The following findings describe the intent and purpose of this ordinance:

- a. The City has enacted Title 17.00, Zoning, of the Moab Municipal Code, which governs land use and development within the City Limits.
- b. From time to time the City undertakes to revise its zoning ordinances to improve the quality of land development and align the Code with state law and contemporary planning concepts.
- c. The City has also adopted a Moderate-Income Housing Plan and is in the process of reviewing barriers to the construction of housing in the community.
- d. The Council is in support of eliminating barriers to increase the inventory of workforce housing.
- e. The City Council adopted the Moab Area Affordable Housing Plan as an addendum to the City of Moab General Plan on January 8, 2017.
- f. Housing stock in Moab is being consumed by second homes and tourism related lodging. Persons employed in tourism and lodging-related occupations are unable to afford housing given current wage and housing trends.
- g. Concurrently, the cost of housing has become increasingly unaffordable, with a median home price of \$325,000.00, as compared to annual household median income of \$52,000.
- h. The lack of affordable housing can result in crowding, undesirable living conditions, and a decrease in the quality of life for Moab workers and their families.
- i. The City has committed to encouraging the development of affordable housing opportunities by creating the Planned Affordable Development (PAD).
- j. The City finds that there is a public need to adopt this ordinance because market conditions are not supplying the needed numbers of affordable housing units for Moab residents. The City finds that it must undertake creative mechanisms to encourage the development of affordable housing.
- k. The approval of PAD housing subject to affordability controls is in the public interest and within the legitimate police powers of the City.

Now therefore, the City of Moab enacts the following amendments to the Moab Municipal Code.

Chapter 17.68
PLANNED AFFORDABLE DEVELOPMENT

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17.68.10 Purpose

- A. The purpose of this Chapter is to allow Planned Affordable Developments (PAD) that provide incentives for the development of affordable housing. To qualify, PAD affordable housing units are subject to deed restrictions that preserve the affordability of the units for a period of not less than fifty (50) years. The affordability controls provided in this Chapter are voluntary, entered into by contract between the City and the applicant in exchange for the zoning concessions authorized herein.

- B. As applicable to PAD developments, the provisions of this Chapter supersede any conflicting or inconsistent provisions which may be found elsewhere in the Moab Municipal Code.

17.68.020 Definitions

The following definitions apply to this Chapter:

- 1. “Adjacent” means a parcel of land that shares a boundary with the parcel of real property included in an application under this Chapter.

- 2. “Advisory Documents” means planning documents adopted by the City from time to time, including: the Moab General Plan; Storm Water Management Master Plan; Sanitary Sewer Master Plan; Water Storage Distribution Master Plan; Natural Hazards Pre-disaster Master Plan; or similarly adopted planning documents.

3. “Affordable Housing” or “Affordable Units” means housing developed pursuant to this Chapter in which the sales price of the unit, or the rental rate for each unit, does not exceed the sums deemed affordable to individuals and families with annual incomes of one hundred percent (100%) or less of Grand County Area Median Income (AMI), as determined by the U.S. Department of Housing and Urban Development (HUD) and the requirements of this Chapter. Affordable housing is further defined by the following income subcategories:
 - a. “Moderate Income” means household income which is between eighty percent (80%) and one hundred percent (100%) of Grand County Area Median Income as defined by HUD.
 - b. “Low Income” means household income which is between sixty percent (60%) and seventy nine percent (79%) of Grand County Area Median Income.
 - c. “Very Low Income” means household income which is between thirty percent (30%) and fifty nine percent (59%) of Grand County Area Median Income.
 - d. “Extremely Low Income” means household income which is below thirty percent (30%) of the Grand County Area Median Income.
4. “Area Median Income (AMI)” means the published estimate of median income in Grand County that is determined periodically by HUD, as adjusted for household size.
5. “Development” means new construction or remodeling of buildings or real property.
6. “Development Review Team (DRT)” means the committee of City employees including the Planning Director, Public Works Director, Building Official, and such other persons as may be designated by the City from time to time.
7. “Developer” means a person offering affordable housing units developed pursuant to this Chapter for lease or rent to Eligible Persons.
8. “Development Improvements Agreement (DIA)” means a written agreement between an applicant for a Planned Affordable Development and the City of Moab containing specific requirements to ensure the construction of specified public or private improvements, the phasing of construction, and security to ensure completion of improvements as a condition for Final Plat/Plan approval.
9. “Eligible Persons” means those persons authorized to occupy PAD affordable housing units, as further defined in Section 17.68.110, below.
10. “Final Approval” means the approval, with or without conditions, given by the City Council, providing the necessary authority for an applicant to:
 - a) in the case of a PAD

subdivision, record the Final Plat and convey subdivision lots; or b) in the case of a PAD rental development, proceed with development of rental units.

11. “Final Plat” means a map of a subdivision under this Chapter which has been surveyed by a licensed professional land surveyor and acknowledged by the owner, and which accurately depicts streets, alleys, easements, blocks, lots, survey monuments, public/private improvements, and other attributes of a PAD subdivision.
12. “Final Site Plan” means a map of a rental development under this Chapter which has been surveyed by a licensed professional land surveyor and acknowledged by the owner, and which accurately depicts streets, alleys, easements, blocks, lots, survey monuments, building envelopes, public/private improvements, and other attributes of a PAD rental development.
13. “Habitable Room” means a heated room in a dwelling that is intended for human occupation. Habitable rooms do not include bathrooms, closets, storage rooms, utility spaces, or the like.
14. “Household” means a person living alone, or two or more persons, whether related by blood or marriage or not, who reside together in a single dwelling unit.
15. “HUD” means the United States Department of Housing and Urban Development.
16. “Land Use Restriction Agreement (LURA)” means a contract between the City of Moab and an affordable housing Developer or Subdivider that is recorded as an encumbrance upon the real property to be developed, and that provides for continued enforcement of the affordability provisions and other requirements of this Chapter for a duration of not less than (50) years. A LURA shall run with the land and be binding upon the parties and their successors in title, as provided by its terms.
17. “Lot” means a tract of land defined in an approved plat which is developed for housing and which may be conveyed to a buyer by deed.
18. “Market Rate” means a housing unit offered for sale or lease that is not subject to limitations as to sales price or rental rates otherwise applicable to affordable units under this Chapter.
19. “Monitoring Agency” means the City of Moab, or its designee, charged with monitoring and/or enforcement of the affordability controls or development approval conditions for housing developed pursuant to this Chapter, including LURA provisions.
20. “Original Purchase Price” means the actual sales price for affordable housing units developed under this Chapter calculated as follows: principal, interest, taxes, and insurance (PITI) on the unit shall not exceed thirty percent (30%) of the Grand County AMI for a household of four (4) divided by twelve (12) months. Assumptions used to calculate the OPP shall be i) a five (5) percent down payment; ii) a thirty (30) year

mortgage term; and iii) a mortgage rate equal to the prevailing First Home rate, or its equivalent, of the Utah Housing Corporation (or similar agency).

21. “Overnight Accommodations” means short-term rental housing provided to short-term tenants for a period of thirty (30) consecutive days or less.
22. “Public Dedication” means streets, sidewalks, parks, open space, trails, or other areas of land or improvements to be dedicated to public use under this Chapter.
23. “Preliminary Plan” means a map of a rental development proposed under this Chapter which has been surveyed by a licensed professional land surveyor and acknowledged or authorized by the owner, and which accurately depicts streets, alleys, easements, blocks, lots, survey monuments, building envelopes, public/private improvements, utilities, and other attributes of a proposed PAD rental development. The Preliminary Plan shall include such other submittals as to planned improvements as are required by this Chapter.
24. “Preliminary Plat” means a map of a subdivision development proposed under this Chapter which has been surveyed by a licensed professional land surveyor and acknowledged or authorized by the owner, and which accurately depicts streets, alleys, easements, blocks, lots, survey monuments, building envelopes, public/private improvements, utilities, and other attributes of a proposed PAD subdivision. The Preliminary Plat shall include such other submittals as to planned improvements as are required by this Chapter.
25. “Preliminary Approval” means an approval, with or without conditions, given by the land use authority that provides the necessary authority for an applicant to proceed with the preparation of the Final Plat or the Final Plan.
26. “Project Area” means a defined tract of land, including all subsequent development phases, that is proposed for a PAD development application.
27. “Setback” means the minimum distance from a specified boundary that a structure or other feature must be located.
28. “Subdivider” means any person creating a subdivision pursuant to this Chapter and offering affordable housing units or lots for sale to eligible persons.
29. “Subdivision” means a described tract of land that has been surveyed by a licensed professional land surveyor and acknowledged or authorized by the owner, that describes two or more lots which may be conveyed to buyers, and that accurately depicts streets, alleys, easements, blocks, lots, survey monuments, and other attributes of a proposed PAD subdivision development.
30. “Site Plan” means a described tract of land proposed for rental development under this Chapter which has been surveyed by a licensed professional land surveyor and acknowledged or authorized by the owner, and which accurately depicts streets, alleys,

easements, blocks, lots, survey monuments, building envelopes, public/private improvements, utilities, and other attributes of a proposed PAD rental development.

31. “Unit” means a residential dwelling containing, at minimum, a permanently installed kitchen (including, a sink, stove, refrigerator, counters, and cabinets), bathroom (sink, toilet, and a shower or bathtub), bedroom (or sleeping area), living room (or area), parking, and storage space. All habitable rooms shall be separate from the bathroom(s). A residential unit may contain more than one bedroom, depending upon the needs of the development. Each housing unit shall have non-exclusive access to common elements within the particular development.

17.68.030 Permitted Locations and Housing Types

- A. Subject to the provisions of this Chapter, Planned Affordable Developments shall be allowed in the following zoning districts:
1. **Residential Zones:** R-3, R-4 zones;
 2. **Commercial Zones:** C-1, C-2, C-3, C-4, and C-5 zones.
- B. Housing types for a PAD development shall conform to the types permitted in the underlying zoning district and the other provisions of this Chapter. All PAD units constructed in the C-3 zoning district shall be located on the second or higher floors of each building.

17.68.040 Minimum Project Area; Subdivision Lot Sizes

- A. Provided that all requirements of this Chapter can be met, there is no minimum project area required for a PAD development.
- B. Provided that all requirements of this Chapter can be met, there is no minimum lot size for lots within a PAD subdivision.

17.68.050 Performance Standards

- A. **Affordability Concept.** Applicants are encouraged to include a mix of one bedroom (or studio), two-bedroom, or three-bedroom units. PAD units shall have a maximum of three (3) bedrooms. The application shall demonstrate that the units for sale or rent qualify as affordable housing, as defined by this Chapter. Units developed under this Chapter (including affordable and market-rate units) shall not be used or offered as overnight accommodations. Where an application includes phased development, affordable units shall be constructed as part of each phase with not less than the minimum required ratio of market rate and affordable units in each phase.
- B. **Market Rate Limits and Income Tiers.** For PAD developments proposing up to five (5) units in a project area the number of market rate units shall not exceed one (1). In all other PAD developments the percentage of market rate units shall not exceed thirty percent (30%)

of the total number of units. Applicants are encouraged to provide a mix of units that are affordable to moderate-income, low-income, very-low-income, and extremely-low-income households. Where the percentage of any required type of unit in a PAD development, as applied to the total number of units, results in decimal of .5 or higher, the number of required units of a particular type shall be rounded upward.

- C. **Minimum Unit Sizes.** All housing units developed under this Chapter shall contain, at minimum: a permanently installed kitchen (including, at minimum, a sink, stove, refrigerator, counters and cabinets); bathroom (including a sink, toilet, shower [or bathtub]); bedroom (or sleeping area); living area; parking; and storage space. Housing units may contain multiple bedrooms or other functional spaces as needed. The minimum total area of the habitable rooms of PAD units (excluding closets, storage spaces, bathrooms, and utility spaces) shall be not less than two hundred seventy-five (275) square feet, measured from the interior of the unit. All housing units, and all habitable rooms within those units, shall comply with applicable building code minimum requirements, including the International Residential Code, as adopted by the State of Utah.
- D. **Height of structures.** The maximum building height of all buildings in a PAD development shall be as follows:

R-3 and R-4:	30 feet
C-1, C-2, C-3, C-4, and C-5:	40 feet

Building height shall be measured from the average finished grade of the building to the midpoint of the highest plane of the roof.

- E. **Setbacks; Adjacent Solar Access.** Except as necessary to preserve solar access, the front, back, and side setbacks of a PAD development relative to other properties shall be provided by the underlying zoning district. PAD developments may be required to provide additional setbacks where necessary to provide adequate solar access to adjacent properties located immediately to the north of the project boundary.
- F. **Open space/Common Facilities.** PAD rental developments shall include open space for residents consistent with the size and scope of the project area. Open space, such as landscaping, recreation areas, entryways, commons spaces, bicycle racks, and setback areas shall comprise not less than five percent (5%) of the project area. Required parking spaces, stairways, elevators, and hallways shall not be calculated as open space. PAD subdivisions are not subject to the five percent requirement of this Subsection (F).
- G. **Stormwater.** Projects shall include engineered plans for the detention and conveyance of reasonably anticipated storm-water attributable to the project. Storm-water conveyances shall not connect to sanitary sewers.

- H. **Sidewalks/trails.** PAD developments shall incorporate elements to facilitate pedestrian and bicycle access. Sidewalks are required along at least one side of all public street frontages. Trails may be required to connect to existing or planned trail systems or public streets.
- I. **Parking.** Vehicle parking shall be provided for all PAD developments at a rate of not less than one (1) off-street space per one-bedroom unit and a maximum of two (2) off-street parking spaces for each two-bedroom or larger unit. Wherever possible, parking areas shall be located within the perimeter of the building envelope. Hard-scape semi-permeable materials may be used for parking spaces.
- J. **Lighting.** Adequate lighting must be provided for public spaces and common areas. Light fixtures shall consist of a full cutoff, fully shielded, downward directed fixture. Wall mounted flood lights that direct outward toward other properties and roadways are prohibited.
- K. **Manufactured housing.** All manufactured housing to be utilized in developments under this Chapter shall comply with all other provisions of the building code.
- L. **Culinary Water/Wastewater.** All housing units shall be served by municipal culinary water and wastewater service. Fire flows shall be provided and hydrants installed in conformity with building codes and fire department requirements.
- M. **Streets.** Developments shall provide adequate public street access to each dwelling. All streets within an application shall be hard surfaced or paved and constructed in conformity with City design specifications, as determined by staff. Streets shall include concrete curb, gutter, and sidewalk, and be configured to allow adequate vehicle and emergency access. Streets shall be designed to promote efficient circulation and connectivity to other parcels and the remainder of the City street system. Street signage must be installed consistent with staff requirements.
- N. **Utilities.** Applications must include a utility plan showing feasibility and placement of electrical, telephone, cable, and internet services.
- O. **Site Specific Elements or Standards.** Depending on the scope of the project area, the City may require that site-specific design elements or standards be incorporated into an application as needed to address public safety, recreation, construction requirements, access, connectivity, or future phases of development.
- P. **Storage.** Each dwelling unit shall be provided with a separate, covered lockable storage space that is at least large enough to store as many adult bicycles as there are bedrooms in the unit.
- Q. **Advisory Document Consistency.** All applications shall demonstrate substantial consistency with Advisory Documents. The land use authority may deviate from Advisory Documents on a case by case basis upon a showing of good cause.

- R. **Lot Sales with Finished Dwellings.** PAD subdivisions shall include the sale of an affordable housing unit together with the sale of a lot, unless exempted by the terms of a development agreement.

17.68.060 Application Review Procedures

A. General Procedures

PAD applicants shall comply with the following review procedures.

1. **Pre-application Meeting.** A pre-application conference shall be held with planning staff to discuss the proposed development concept, likely development issues, and the requirements of this Chapter.
2. **Application Submittal/Completeness Review.** Upon submittal of an application and payment of the required fees, City Staff will review the application to determine if it includes, in form adequate for substantive review, all of the submittal materials required by this Chapter. If an application is found to be deficient, City staff will notify the applicant of the deficiency in writing.
3. **Staff Review.** In every case the application will be reviewed by the DRT and review agencies. The DRT may require that the applicant correct errors or incorporate design changes consistent with applicable codes, design standards, and/or review criteria. Where an application is substantially incomplete or grossly deficient, the staff may notify the applicant in writing that the application will not be subject to further review until such time as the enumerated defects are cured.
4. **Planning Commission Review.** Preliminary Plat or Preliminary Site Plans that have completed Staff review will be forwarded to the Planning Commission with a staff recommendation. The Planning Commission shall hold a public hearing to review the application and receive public comment, and it may: a) approve the application; b) deny the application; c) approve the application subject to conditions; or d) table the application pending receipt of additional information.
 - a. At preliminary plat/plan review the applicant shall demonstrate that the plat or plan meets all submittal and performance criteria. Final construction drawings are not required, but all submittals must demonstrate the feasibility of the final design and conformity with this Chapter, applicable codes, and design standards.
5. **Final Plat/Final Site Plan Review Procedures.** When an applicant is ready to request Final Site Plan or Final Plat approval a Final Plat or Site Plan shall be submitted for review by Staff. Staff will review the design documents for completeness and verify that they incorporate changes or conditions required at the preliminary approval stage. Additionally, all related documents and agreements, including a Subdivision Improvements and Phasing Agreement, Land Use Restriction Agreement, and Covenants,

Conditions & Restrictions (if applicable), and final construction drawings shall be reviewed and in final form prior to submittal to the City Council for final approval.

- a. Final approval shall be in the form of an ordinance adopted by the City Council incorporating all the design drawings, the Final Plat or Final Plan, the conditions, and all development agreements comprising the PAD. Final approval is a legislative decision of the City and constitutes a site-specific development plan for all lands included in the project area.

17.68.070 Submittal Requirements

- A. A PAD application must be submitted to the Planning Department on the approved application form, together with the required review fee. The application must be signed by the record property owner or, if the applicant is not the owner, the applicant must deliver proof of approval signed by the owner. Components of the application submittal may contain multiple plan sets or reports, provided, that they are clear, legible, and successfully demonstrate the purposes required under this Chapter. Unless waived by the Planning Director, the application must include four copies and electronic PDF copies of all design drawings and submittals.
- B. PAD applications shall conform to the submittal requirements of Chapter 17.67, Site Plan Review, except that site plan submittal requirements are waived for development of up to six (6) dwelling units. Developments subject to this subsection (B) shall submit all required building permit submittals with the application, and City staff may require supplementation of submittals to assure compliance with this Chapter. Subdivision Developments subject to this subsection (B) shall also submit a proposed Final Plat for review and approval.
- C. **Additional Submittals--Waiver of Certain Submittals.** The Planning Director has discretion to require other submittals where appropriate for the review of a particular application. Alternatively, the Planning Director has discretion to waive or modify any requirement for a particular submittal if it is determined that the document or report is not necessary, or if an alternate submittal is justified for the review of a particular application. Any waiver shall be in writing labeled as a submittal waiver, shall identify the project by name and application number, and shall be signed and dated by the Planning Director.
- D. **Conformity with Submittal Standards.** All submittals must conform to the land use submittal standards adopted by the City. Submittals which do not clearly or accurately depict elements required for review of the project may be rejected, or staff may require revisions during the review process.
- E. **Affordable Housing Development Plan.** The Affordable Housing Development Plan shall contain, at a minimum, the following information:
 1. A general description of the development, including whether the development will contain units for rent or sale;

2. The total number of market-rate units and affordable housing units (with descriptions of the income subcategories) and a depiction of where those units will be situated on the plat/plan;
3. The square footage of each market-rate unit and of each affordable unit measured from the interior walls of the unit;
4. The estimated sale price or monthly rent for each market-rate unit or lot and each affordable housing unit;
5. If construction of dwelling units is to be phased, a phasing plan stating the number of market-rate and affordable housing units in each phase; and
6. Statistical information as to the project area, developed area square footage, open space area, number of parking spaces, and the like shall be included.
7. Affordability calculations and assumptions demonstrating that the housing will be affordable under current economic conditions.

F. **Departmental Standards.** All developments pursuant to this Chapter shall comply with departmental standards published by the City.

17.68.080 Miscellaneous Provisions

- A. **VariANCES--Exceptional Conditions.** In cases where unusual topographic or other exceptional conditions would pose a hardship on the applicant, variances from the strict requirements of this Chapter may be made by the Appeal Authority prior to Final Plat/Plan review. Staff shall provide a recommendation with respect to the proposed variance. The Appeal Authority may grant a variance, provided that it will not result in substantial detriment to the public good and will not substantially impair the intent and purpose of this Chapter.
- B. **Accessory Dwelling Units Prohibited.** Accessory dwelling units, as defined in the Moab Municipal Code, are not permitted within a PAD development.
- C. **Vacating or Changing a Subdivision Plat.** Any proposed vacation, alteration, change, or amendment to an approved PAD plat must be reviewed in conformity with the procedures and standards applicable under Utah law. An amendment that would violate one or more provisions of this Chapter or applicable development approvals may be grounds for denial.

D. **Decision Matrix.** Decisions under this Chapter shall be made by the following:

Application/Action	Advisory Body	Land Use Authority	Appeal Body	Required Public Hearing
Prelim. Plat/ Prelim. Site Plan	City Staff	Planning Commission	AA**	Yes, (PC)
Final Plat/Site Plan	City Staff	City Council	District Court	No

**AA means the Appeal Authority, as specified in MMC 17.72.120

E. **Proof of Service Availability for Non-City Authorities.** Where the City is not able to provide culinary water or wastewater service to a proposed development, the applicant will be required to provide a current letter from the water or wastewater service provider demonstrating that water and wastewater service is available to the subject site.

17.68.090 Appeal Procedures

- A. Any person adversely affected by a preliminary land use decision, including a decision by the Planning Commission approving or denying a preliminary Plat or Plan, may appeal that decision to the Appeal Authority, and the appeal shall be governed by the procedures in MMC § 17.72.120 through 170.
- B. Any person adversely affected by a final land use decision of the City Council under this Chapter may appeal that decision by filing an action in the District Court for Grand County, Utah.
- C. Exhaustion of all administrative remedies shall be required prior to any applicant seeking judicial review of any final decision pursuant to this Chapter. Failure to exhaust administrative remedies shall result in the action or suit being dismissed.
- D. A judicial action seeking review or appeal of a final decision or action under this Chapter must be filed no later than thirty (30) calendar days from the date of the decision or order that is the subject of the appeal.
- E. Upon the commencement of a judicial appeal challenging any decision under this Chapter, the City shall promptly transmit to the district court true and correct copies of all submittals, testimony, orders, and file documents comprising the record pertaining to the application, including any transcripts or tape recordings of proceedings.
- F. There shall be no judicial review of legal claims or points of error which are not first presented for review or decision to the land use authority.
- G. In any review pursuant to this Chapter (whether administrative or judicial), the reviewing body shall presume the decision made under this Chapter is valid. A final decision of the City Council shall be affirmed if it is found to be within the scope of legislative discretion.

- H. Disputes concerning or arising from the administration of this Chapter after final land use approval, including but not limited to enforcement of the Land Use Restriction Agreement, affordability controls of this Chapter, or the like, shall be heard by the District Court for Grand County, Utah.

17.68.100 Development Improvements Agreement

- A. The Development Improvements Agreement (DIA) shall be approved by the City Council at the time of approval of the Final Plat or Final Site Plan. A DIA between the City and the applicant is required to specify the overall development plan in writing and is a condition precedent to the commencement of construction. The DIA shall set forth the commitments and obligations of the City of Moab and the applicant, including, as necessary, a financial assurance for required public improvements, the applicant's phasing plan, and other details particular to the development. The DIA shall be subject to review and approval by the City Council and must be consistent with all prior approval conditions applicable to the approved plan.
- B. The DIA may require that an applicant provide a performance bond, letter of credit, or other financial assurance to secure completion of required improvements, and/or as a condition for Final Plat or Final Site Plan approval. The financial assurance shall be provided in an amount equal to one hundred fifty percent (150%) of the estimated cost of all required public improvements, including: landscaping; road improvements; pedestrian ways, trails, sidewalks, curbs, and gutters; street lighting and signage; culinary water lines and fire hydrants; wastewater lines and wastewater disposal facilities; and storm-water improvements. City staff shall verify the correct amount of the financial assurance based upon review of the cost of the required improvements. Not more than ten percent (10%) of the financial assurance may be held to secure any warranty claims, as provided in the DIA.
- C. With respect to a PAD subdivision, no final plat for the subdivision, or any phase thereof, and no building permit for construction upon any lot within the subdivision shall be executed by the City until such time as either: 1) all public improvements are completed in accordance with the DIA and accepted by the City; or 2) a financial assurance as required by this Chapter is provided to the City. A Subdivider or owner shall not convey or attempt to convey any lot prior to the recording of the final plat, and any purported conveyance in violation of this subsection shall be void.
- D. With respect to a PAD rental development, no final site plan for the development, or any phase thereof, and no building permit for construction of housing units within the development, shall be executed by the City until such time as either: 1) all public improvements are completed in accordance with the DIA; or 2) a financial assurance as required by this Chapter is provided to the City. A Developer or owner shall not convey or attempt to enter into any lease prior to the execution of the final site plan, and any purported lease or rental contract entered into in violation of this subsection shall be void.

- E. All public improvements shall be warranted against defects in materials and workmanship for a period of not less than one (1) year from the date of acceptance by the City. Upon expiration of any warranty period the financial assurance provided by this Section shall be released.

17.68.110 Affordability Controls

A. **Eligibility- General Policy.** All affordable housing developed pursuant to this Chapter, including rental units and units (or lots) for sale, shall be leased or sold to eligible persons. The Developer or Subdivider shall at all times assure that affordable housing units are transferred to eligible persons, and it shall provide proof of its compliance with all eligibility and affordability controls to the City or its designated Monitoring Agency annually and/or upon written request. The City may require advance approval of eligibility. Prospective tenants or purchasers of affordable housing shall provide verification of their eligibility to either the Developer or Subdivider at the time they apply for housing subject to this Chapter. To be an eligible person for affordable housing, the person(s) must satisfy, at the time of application and continuing at all times thereafter, the following criteria:

1. The persons comprising the household must have a combined household income that does not exceed one hundred percent (100%) of the Grand County, Utah, Area Median Income (AMI), as published by HUD from time to time;
3. At least one person in the household must be either: i) employed full time in Grand County; ii) disabled; iii) a retired person over sixty years of age who was a full-time employee of an entity located within Grand County for at least five (5) continuous years immediately preceding his or her retirement; or iv) a parent residing with one (1) or more minor children; and
4. All persons occupying PAD affordable housing units must utilize the housing as their sole place of residence.

B. **Occupancy Restrictions.** Leasing of affordable sales units and subleasing of rental agreements for affordable rental units shall not be permitted, except upon advance written approval by the City where the proposed occupants qualify as eligible person(s). Overnight accommodation uses shall not be permitted in any PAD housing units (including market-rate units). Persons occupying PAD market-rate units must utilize the housing as their sole place of residence; the use of market-rate units as second homes is prohibited.

C. **Rent Calculation.** The Developer or owner offering affordable housing units for lease shall set the monthly rental rate at an amount that does not exceed thirty percent (30%) of the area median income (AMI) for a Grand County household, less a reasonable utility allowance, divided by twelve (12) months (the Allowed Rental Rate). The allowed rental rate shall be adjusted proportionately, depending upon the size of the unit and the income tier (moderate, low, very-low, or extremely-low) of the persons occupying the unit. Inflation adjustments in the allowed rental rate shall be made annually, as of January of each calendar year, and shall

be based upon the year to year increase in the Consumer Price Index (CPI-U), West Region, as published by the United States Department of Labor, Bureau of Labor Statistics. The City or the Monitoring Agency will publish the inflation adjustment and provide same to Developers or owners for purposes of calculating Allowed Rental Rate increases.

1. Nothing in this Chapter shall preclude a Developer or owner from entering into a fixed rental rate lease with a tenant who is otherwise compliant with this Chapter at the time of execution.

D. Sales Eligibility, Additional Requirements. In addition to the general qualifications set forth in Subsections A and B, above, eligible persons who purchase affordable housing units pursuant to this Chapter shall demonstrate that their total household net assets (asset value after deduction of the value of any liens-such as a car loan) shall not exceed forty percent (40%) of the original purchase price (OPP) or the subsequent sales price of the housing unit.

E. Sales Price Calculation; Subsequent Sales. The OPP for affordable housing units developed pursuant to this Chapter shall be calculated as follows: principal, interest, taxes, and insurance (PITI) on the unit shall not exceed thirty percent (30%) of the Grand County AMI for a household of four divided by twelve (12) months. Assumptions used to calculate the OPP shall be: i) a five percent (5%) down payment; ii) a 30-year mortgage term; and a mortgage rate equal to the prevailing First Home rate, or its equivalent, of the Utah Housing Corporation (www.utahhousingcorp.org) (or equivalent). The City will determine OPP at the time of land use approval in a manner that reflects proportionate changes in OPP based on housing unit size.

F. Maximum Appreciation. To assure continued affordability, each affordable housing unit developed under this Chapter shall be subject to a deed restriction, in a form approved by the City, which caps appreciation which may be earned upon subsequent sale of the unit. The maximum resale price (MRP) shall be:

1. The OPP plus three percent (3%) per year from the date of purchase to the date of sale, prorated for each month less than a calendar year; and
2. The actual cost of any capital improvements to the unit, including by way of example: i) the addition of finished living space; ii) remodeling of a kitchen or bath; iii) replacement of major components such as heating systems, cooling systems, windows, roofing, siding or the like; provided that the improvements have been permitted and inspected by the City Building Official. The property owner is responsible for documenting the value of all such improvements at the time of permitting. In no event shall capital improvements exceed five percent (5%) of the MRP.

17.68.120 Land Use Restriction Agreement and Covenants

A. At the time of final approval of every PAD, the City and the Developer/Subdivider shall execute and record in the land records a Land Use Restriction Agreement (LURA) implementing and providing for enforcement of the affordability controls specified in this

Chapter. The LURA shall be a deed restriction running with the land, and binding upon the original grantor, and all successors and assigns in title. The LURA shall provide, at a minimum, the following:

1. The affordable housing units shall at all times be leased or sold to, and occupied by, eligible persons;
 2. The affordable housing units shall be leased at rent levels affordable to eligible persons for a period of not less than fifty (50) years from the date of the initial certificate of occupancy;
 3. The affordable housing units shall be sold at sales prices affordable to eligible persons for a period of not less than fifty (50) years from the date of the initial certificate of occupancy;
 4. Subleasing of PAD affordable rental units and leasing of PAD affordable sales units is prohibited, except that eligible persons may lease or sublease affordable units as otherwise provided in this Chapter, and as verified by the City;
 5. The offering or use of any PAD units (including market rate units) as overnight accommodations is prohibited;
 6. The number of affordable units shall not be reduced and shall remain at the originally approved affordability level for a period of not less than fifty (50) years; and
 7. Provisions for enforcement and monitoring of the Affordability Controls, including (as applicable) specific performance, damages, and an award of attorney fees and costs in the event of a violation.
- B. **Maintenance.** For PAD rental developments the LURA shall contain provisions providing that the owner shall maintain all units in a safe, sanitary, and functional condition in accordance with the provisions of the International Property Maintenance Code, as adopted by the City, or its equivalent.
- C. **Recording Deed Restrictions.** The LURA shall be recorded in the land records prior to the recording of the Final Plat for a PAD subdivision or prior to the execution of a Final Site Plan for a PAD rental development.
- D. **Monitoring.** The Developer/owner shall manage and operate all affordable units and shall submit an annual report to the City of Moab, or its Monitoring Agency, identifying which units are affordable units in a PAD, the monthly rent for each unit, vacancy information for each year for the prior year, monthly income for tenants of each affordable units, and other information as required by the LURA. The annual report shall contain information sufficient to determine whether tenants are eligible for affordable housing as provided by this Chapter.

1. A Subdivider/owner marketing affordable units for sale shall submit an annual report to the City identifying all affordable units sold in the last calendar year, the Original Purchase Price for each unit, and information sufficient to verify purchaser eligibility, as required by the LURA. The annual report shall contain information sufficient to determine whether home purchasers are eligible for affordable housing as provided by this Chapter.
2. The City or its Monitoring Agency shall be authorized to audit and review all Developer, Subdivider, and owner records pertaining to housing developed under this Chapter to verify compliance with this Chapter and all Affordability Controls.

- E. **Extension of the LURA.** The duration of the LURA may be extended for additional successive ten (10) year terms if the City Council certifies in writing at or before the expiration that there is a continuing need for affordable housing, and that it is reasonable that the affordability controls continue. In that case the City may execute any necessary documents to give effect to this provision.
- F. **Covenants.** Covenants, conditions, and restrictions (CCRs) for a PAD subdivision shall be reviewed and subject to approval by the City contemporaneous with final plat approval. The CCRs shall provide mechanisms for enforcement of community rules, collection of assessments (if applicable), and maintenance of common areas.

17.68.130 Impact Fees

In conjunction with final approval of any PAD development the City Council may waive all or a part of the impact fees otherwise payable for the development. Any waiver shall be vested in the discretion of the City Council, based on the merits of the application in attaining the affordability goals of this Chapter.

17.68.140 Enforcement

- A. A Developer, Subdivider, or successor in title who fails to comply with the Development, Improvements Agreement, the LURA, or any other agreements, development approvals, or provisions of this Chapter shall be issued a notice of violation and informed of the default under the applicable agreement. Each such person shall be given a reasonable period of time, not to exceed thirty (30) days, in which to cure any default or breach under the applicable agreement.
- B. Upon declaration of default the City may exercise any remedies for violation available under City ordinances or Utah statutes, including, without limitation: i) proceeding against the financial assurance; ii). withholding building permits, certificates of occupancy, or certificates of zoning compliance; iii) obtaining an injunction to halt or abate zoning violations or breach of the agreement; iv) recording an affidavit of a lapse of plat/plan, in whole or in part; v) commencing an action for damages—including, but not limited to, damages for costs incurred in completing, repairing, or replacing required improvements or abating any violations; and/or vi) any other remedies available at law or equity, including the

remedy of specific performance. The City may combine remedies in its discretion and pursue some or all at different times, as may fit the applicable breach. In any action for injunctive relief the City need only prove a default or violation under this Chapter, and such relief shall be granted without the necessity of bond.

- C. The recording of an affidavit of lapse of plat/plan by the City shall result in the lapse of all prior land use approvals and the voiding of the subdivision of lots or the site plan within the real property specified in the affidavit.
- D. With respect to any default under the LURA or any other affordability controls of this Chapter, in addition to the remedies specified above, the City may obtain restitution or disgorgement of any proceeds realized by a Subdivider, Developer, or any successor in title from any leasing, sale, or other disposition of affordable housing units in violation of the affordability controls of this Chapter. In the alternative, the City may levy liquidated damages in the amount of five thousand dollars (\$5,000.00) per violation.
- E. In any enforcement proceedings under this section the City shall be entitled to recover its reasonable attorney fees and court costs, in addition to any other relief provided.

17.68.150 Interpretation

This Chapter shall be interpreted and construed in a manner that conforms to applicable law. If any provision shall be found to be unlawful or otherwise unenforceable, it shall be stricken or reformed in a manner that conforms with applicable law, without invalidating the entire ordinance.

17.68.160 Implementation

City staff may develop and implement program rules consistent with this Chapter.

This ordinance shall take effect immediately upon passage.

Passed and adopted by action of the City Council this ____ day of _____, 2019.

By: _____
Mayor Emily S. Niehaus

Attest:

By: _____
Sommar Johnson, Recorder

Date