

AN ORDINANCE ESTABLISHING  
THE ADMINISTRATIVE  
HEARING PROGRAM WITHIN SAN JUAN COUNTY

WHEREAS, the Board of San Juan County Commissioners has determined that administrative enforcement of the duly adopted rules and regulations as well as the provisions of the San Juan County Ordinances, Policies, Procedures and applicable State statutes (altogether referred to herein as “code”) is in the best interests of the citizens of the County; and

WHEREAS, Utah Code Annotated § 17-53-228 formulates the process for Counties to establish an administrative hearings and procedures process to review and decide matters relating to the violation, enforcement, or administration of a County’s civil ordinance, including an ordinance related to the following: (a) a building code; (b) planning and zoning; (c) animal control; (d) licensing; (e) health and safety; (f) County employment; (g) sanitation; and

WHEREAS, adopting an Administrative Hearing Program will aid in code enforcement, creates a process in which an administrative decision bearing financial implications can be reviewed and disputed, it imposes a process where civil penalties for code violations can be reviewed as well as establishes an appropriate due process protections for a party participating in an administrative hearing; and

WHEREAS, adopting an Ordinance establishing the Administrative Hearing Program will allow appeals for administrative, legislative, and executive decisions to be appealed through a process by a neutral third-party Administrative Law Judge in accordance with State Code; and

WHEREAS, the Board of San Juan County Commissioners have contracted with an Administrative Law Judge to review and decide matters relating to the violation, enforcement, or administration of a County civil ordinance including those aforementioned ordinances and administration thereof; and


WHEREAS, this ordinance includes those actions of a County Service District.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF SAN JUAN COUNTY COMMISSIONERS AS FOLLOWS:

Section 1. SEVERABILITY: If any provision or clause of this Ordinance or the application thereof to any person or circumstances is held to be unconstitutional or otherwise invalid by any court of competent jurisdiction, such invalidity shall not affect other sections, provisions, clauses or applications hereof which can be implemented without the invalid provision, clause or application hereof. To this end, the provisions and sections of this Ordinance are declared to be severable.

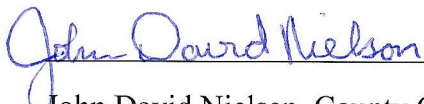
Section 2. EFFECTIVE DATE: This ordinance shall take effect, fifteen (15) days after enactment, and after depositing of a copy in the Clerk/Auditor's Office and publication in a newspaper having general circulation in the County, as required by Utah Code Annotated section 17-53-208.

PASSED AND APPROVED on this 2<sup>nd</sup> day of SEPTEMBER 2020.



Kenneth Maryboy, Chair  
Board of San Juan County Commissioners

Attest:

  
\_\_\_\_\_  
John David Nielsen, County Clerk

## Chapter 1 - ADMINISTRATIVE HEARINGS

### **1.22.000 - Purpose and Intent.**

The Board of San Juan County Commissioners (Commission) find that the enforcement of this code, the adopted rules and regulations and applicable State statutes altogether referred to herein as “code”) is an essential public function. Code enforcement is vital to the protection of the public’s health, safety and quality of life. The Commission therefore recognizes that enforcement starts with the drafting of precise regulations that can be effectively applied in administrative code enforcement hearings, judicial proceedings, land-use decisions, administrative processes affording a hearing, and personnel decisions. The Commission finds that a comprehensive code enforcement system that uses a combination of judicial and administrative remedies is critical to gain compliance with these regulations. Failure to comply with an administrative code enforcement order may require the County to file a criminal or civil action to gain compliance. For specified County action, or a decision made by a County Official, as more particularly defined and designated in published San Juan County ordinances or policies, in which an adverse administrative decision by the County results in detriment to a person, it is the purpose and intent of the County to afford that person due process of law by way of an Administrative Hearing. Due process shall require proper notice of the nature of the administrative decision and the opportunity to be heard, a hearing before a fair and impartial Administrative Law Judge, the right to present evidence, the right to cross-examination, the right to be represented by an attorney or other advocate, the right to receive an adequate explanation of the reasons justifying any resulting administrative order.

### **1.22.010 – Scope.**

The provisions of this chapter may be applied to all violations of this code, the adopted rules and regulations and applicable State statutes. It has been designed as an additional remedy for the County’s use in achieving compliance with County ordinances and in achieving compliance with the rules and regulations. Nothing in this chapter is intended to grant any authority to enforce its rules and regulations under this chapter unless the Commission adopts by ordinance the code enforcement programs.

### **1.22.020 – Existing Law Continued.**

The provisions of this chapter do not invalidate any other provisions of this code, other County ordinances, but shall be read in conjunction therewith as an additional remedy. By establishing performance standards and obligations to act, it is the intent of the Commission that San Juan County employees and officers, as well as employees and officers of County Districts, exercise discretionary authority in pursuit of an essential governmental function and that any such

standards or obligations shall not be construed as creating a ministerial duty for purposes of tort liability.

### **1.22.030 - Definitions.**

The following words and phrases, whenever used in this chapter, shall be applied as defined in this section, unless a different meaning is specifically defined elsewhere in this chapter and specifically stated to apply:

"Administrative Citation" means a citation issued to a responsible person that gives notice of a violation and the civil fee for such violation.

"Administrative Hearing" a hearing held pursuant to the procedures established by this chapter and at the request of a person charged with a violations or appealing a decision made by the Commission, San Juan County officers, as well as employees and officers of County Districts.

"Administrative Order" means an order issued by an Administrative Law Judge. The order may include an order to enter upon private property to abate a violation of the San Juan County Zoning Ordinance, to pay civil fees and administrative costs, to reverse or modify decisions of the County as provided in published San Juan County ordinances or policies, or take any other action as authorized or required by this chapter and applicable state codes.

"Administrative Process" means a process decision of which a hearing is appropriate for items of administrative decisions such as property nuisance violation, abatement actions, landfill ordinance violations, right-of-way encroachment permit denials, Authority Having Jurisdiction (AHJ) and Fire Chief decisions based on fire code violations, or challenges to County bids and contract awards.

"Administrative Law Judge" means a person appointed or designated to preside over Administrative Hearings.

"Appellant" means the individual requesting a hearing to appeal a decision made.

"County" San Juan County

"Commission" the Board of San Juan County Commissioners representing the Legislative and Executive Body of San Juan County.

"County Administrator" the Chief Administrative Officer of San Juan County.

"County action" means a notice of violation and summons, an administrative citation, an itemized statement of costs, a notice of emergency abatement or other notice of any other adverse County decision for which the right to an Administrative Hearing is specifically provided by ordinance

"County Official" means an Elected Official, Commissioners, County Chief Administrative Officer, County Department Director, or County Building Inspector.

"Enforcement Official" any person authorized to enforce violations of any applicable laws or the adopted rules and regulations including, but not limited to, code enforcement officers, fire

marshals, fire wardens, sheriff deputies, inspectors, building inspectors, the building official, health inspectors, health officials or any other County employee charged with issuing violations of County or State statutes.

"Itemized statement of costs" means a written notice to a responsible person, itemizing the County's actual costs and administrative cost of abating a code violation, ordering payment of those costs and advising the responsible person of the right to contest the reasonableness of the costs at an Administrative Hearing.

"Notice of Compliance" a document issued by the County representing that a property complies with the requirements outlined in the Notice of Violation, and that all outstanding civil fees and costs have been satisfied (either by being paid in full, or a subsequent administrative or judicial decision has resolved the outstanding debt).

"Notice of Emergency Abatement" means a written notice that informs a responsible person of emergency abatement actions taken by the County and provides and itemized statement of costs for those actions.

"Notice of Violation and Summons" means a written notice that informs a responsible person of code violations, orders certain steps to correct the violations, demands appearance at an Administrative Hearing, and sets forth a date and time for the hearing.

"Person" means any natural person, firm, joint venture, joint stock company, partnership, association, club, company, corporation, business trust, organization or the manager, lessee, agent, sergeant, officer or employee of any of them or any other entity that is recognized by law as the subject of rights or duties. For purposes of this chapter, "person" also indicates a person whose interest is adverse to the County at an Administrative Hearing.

"Property Owner" the recorded owner of real property as shown on the records of the County Recorder or Assessor.

#### **1.22.040 - Request for Administrative Hearing.**

- A. Where the right to an Administrative Hearing has been established by San Juan County, a person having that right may request an Administrative Hearing, if the request is filed within ten (10) business days from the date of service of one of the following:
1. Itemized statement of costs as defined in 1.22.030 has been issued in a Notice of Violation of a code violation to a responsible person.
  2. Administrative citation as defined in 1.22.030 has been issued in a Notice of Violation of a code violation to a responsible person.
  3. A decision made by a land use appellant, a board or Officer of the County, or an adversely affected party may after approval of a written decision issued by the County, appeal that decision to the Administrative Hearing Judge by alleging that there is error in any order, requirement, decision, or determination made by the Planning Commission, Commission, County Administrator or Director of Planning in the administration or interpretation of the land use ordinance.
  4. An administrative process decision as defined in 1.22.030.

- B. Notice of emergency abatement as defined in 1.22.030 has been issued in a Notice of Violation of a code violation to a responsible person; or
  - 1. Notice of any other County action where the right to an Administrative Hearing is provided under any published San Juan County ordinance or policy.
- C. The request for an Administrative Hearing shall be made in writing addressed to the office of the County Clerk.
- D. The request shall comply with the following requirements:
  - 1. It shall be in writing;
  - 2. It shall contain a legible, plain statement of the reason or reasons that the person requesting the hearing is entitled to relief from the County action;
  - 3. It shall be accompanied by a copy of the itemized statement of costs, administrative citation, notice of emergency abatement, or other notice of County action for which the hearing is requested;
  - 4. It shall contain the name of the person requesting the hearing and the address to which all notices and orders shall be mailed;
  - 5. It shall be dated and signed by the person requesting the hearing; and
  - 6. It shall be filed with the County Clerk.
- E. The County may initiate an Administrative Hearing by service and filing of a Notice of Violation and Summons. Service of the Notice of Violation and Summons shall be served by any of the following methods, unless different provisions are otherwise specifically stated to apply:
  - 1. Regular mail, postage prepaid, to the last known address of the property owner or other responsible person;
  - 2. Posting the notice conspicuously on or in front of the property. If not inhabited, the notice must also be mailed as in subsection A1 of this section;
  - 3. Personal service; or
  - 4. Published in a newspaper of general circulation once a week for a period of two (2) weeks.
- F. Within twenty calendar (20) days after receiving a request for an Administrative Hearing or the service of a Notice of Violation and Summons, the Administrative Law Judge shall schedule a date, time and place for the Administrative Hearing. Failure to hold the hearing within twenty (20) days of the request shall not be a basis for reversal of the County action. No adverse action, except an emergency abatement, shall be taken pending the Administrative Hearing.
- G. Failure to request an Administrative Hearing within ten (10) calendar days from the date of service of any of the notices in subsection (A) above shall constitute a waiver of the right to an Administrative Hearing and the right to an appeal.

**1.22.050 - Notification of Administrative Hearing.**

- A. Notice of the date, time, and place of the Administrative Hearing shall be served upon the person requesting the hearing no later than five (5) County business days in advance of the hearing. Failure to provide timely notice of the hearing shall result in the continuation of the

hearing. No adverse action will be taken or imposed by the County, with the exception of emergency abatement action, pending the hearing.

- H. Except in the case of an Notice of Violation and Summons, the notice shall be served by mailing it to the address designated in the request for hearing and shall be deemed to have been served on the third business day following the date of mailing. Service of the Notice of Violation and Summons shall be served by any of the following methods, unless different provisions are otherwise specifically stated to apply:
1. Regular mail, postage prepaid, to the last known address of the property owner or other responsible person;
  2. Posting the notice conspicuously on or in front of the property. If not inhabited, the notice must also be mailed as in subsection A1 of this section;
  3. Personal service; or
  4. Published in a newspaper of general circulation once a week for a period of two (2) weeks.
- I. Upon service of the Notice or Notice of Violation and Summons, the person receiving the service shall be required to attend the Administrative Hearing at the appointed date and time.

#### **1.22.060 - Appointment and qualifications of the Administrative Law Judge.**

- A. The County Administrator with the consent of the County Commission, shall appoint an Administrative Law Judge to preside at Administrative Hearings.
- J. The Administrative Law Judge shall serve for a term of three years and, during that three-year term, shall be subject to removal by the County Administrator only for cause.
- K. Cause for removal may be for any conduct unbecoming a hearing officer, dereliction of assigned duties, or the existence of a bias or conflict of interest that might affect impartiality of decisions.
- L. A person appointed to serve as an Administrative Law Judge shall either be law trained or have significant experience with the requirements and operation of Administrative Hearing processes. The person shall be free from any bias or conflict of interest that might affect impartiality of decisions.
- M. An Administrative Law Judge is subject to disqualification for bias, prejudice, interest, or any other reason for which a judge may be disqualified in a court of law. The Administrative Law Judge shall promulgate rules and procedures for disqualification and replacement.

#### **1.22.070 - Powers of Administrative Law Judge.**

- A. An Administrative Law Judge shall have authority to hold an Administrative Hearing for violations of the San Juan County Zoning Ordinance and such other matters as specifically designated by published ordinance or policy.
- N. An Administrative Law Judge may continue a hearing for good cause shown by one of the parties or if the Administrative Law Judge independently determines that due process has not been adequately afforded to a party.
- O. At the request of any party to an Administrative Hearing, an Administrative Law Judge may sign subpoenas for witnesses, documents, and other evidence where the attendance of the witness or the admission of evidence is deemed helpful by the Administrative Law Judge to

decide issues at the hearing. All costs related to the subpoena, including witness and mileage fees, shall be borne by the party requesting the subpoena.

- P. The Administrative Law Judge may modify civil fees or fines upon a finding of good cause. The Administrative Law Judge may reduce the fines to what is just and equitable under the circumstances; however, in connection with an appeal regarding an itemized statement of costs, the Administrative Law Judge may not order the responsible person to pay less than actual costs incurred by the County and shall require the responsible person to pay the administrative costs as established in the consolidated fee schedule.
- Q. The Administrative Law Judge shall have the authority to reverse or modify the administrative decision of a County official.
- R. An Administrative Law Judge has continuing jurisdiction over the subject matter of an Administrative Hearing for the purposes of: granting a continuance; ordering compliance by issuing an administrative order; ensuring compliance of that order; authorizing the County to enter upon private property to abate a violation; modifying an administrative order, assessing costs of abatement, assessing civil fines; or, where extraordinary circumstances exist, granting a new hearing.
- S. An Administrative Law Judge may require a responsible person to post a performance bond to ensure compliance with an administrative order, but only if agreed to by the enforcement official handling the matter for the County.
- T. An Administrative Law Judge shall not make any order that would require or allow a person to violate state law or County ordinance.

#### **1.22.080 - Procedures at Administrative Hearing.**

- A. Administrative Hearings are intended to be informal in nature. Formal rules of evidence and discovery shall not apply; however, upon request made in writing reasonably in advance of a hearing, the County shall provide to a person requesting a hearing the opportunity to review documents, photographs or other tangible evidence it intends to present at the hearing and shall provide a list of the witnesses it intends to call at the hearing. Failure to request discovery shall not be a basis for a continuance. Complainant information shall not be disclosed or released unless the complainant is a witness at the hearing. The procedure and format of the Administrative Hearing shall follow duly adopted policies and procedures.
- U. The County shall bear the burden of proof to establish the existence of a violation of published County ordinances or policies other than those in a land-use appeal.
- V. In a land-use appeal, the burden of proof shall be borne by the appellant.
- W. Such proof shall be established by a preponderance of the evidence.
- X. Each party shall have the opportunity to cross-examine witnesses and present evidence in support of the case. A written declaration signed under penalty of perjury may be accepted in lieu of a personal appearance. Testimony may be given by telephone or other electronic means.
- Y. Administrative Hearings shall be held at the County administrative offices, open to the public and shall be recorded; however, at the discretion of the Administrative Law Judge, Administrative Hearings may be held at the location of a violation as long as adequate provision is made to preserve a verbatim record of the hearing.



- Z. The person shall have the right to be represented by an attorney or other advocate. If an attorney will be representing a responsible person at a hearing, notice of the attorney's name, address, and telephone number shall be given to the County attorney at least one day prior to the hearing. If such notice is not given, the hearing may be continued at the County's request.
- AA. The burden to prove any raised defenses shall be upon the party raising any such defense and shall be established by a preponderance of the evidence.
- BB. Administrative Hearings may be held on Mondays through Fridays, excluding County holidays, between the hours of eight a.m. and nine p.m.

#### **1.22.090 - Failure to attend Administrative Hearing.**

A person who fails to appear at an Administrative Hearing shall be deemed to have waived all rights in connection with the hearing, including the right to appeal. Provided that proper notice of the hearing has been given as provided in published San Juan County ordinances, policies and procedures, an administrative order may be entered against a person based upon the failure to appear.

#### **1.22.100 - Administrative order.**

- A. A person and the County may enter into a stipulated agreement, which shall be signed by both parties. Such agreement may be entered as an administrative order. Entry of such agreement shall constitute a waiver of the right to an Administrative Hearing and the right to appeal.
- CC. Within ten (10) business days after all evidence and testimony are presented, the Administrative Law Judge shall issue a written administrative order that affirms, rejects or modifies the notice of violation and summons, itemized statement of costs, administrative citation, notice of emergency abatement or other County action.
- DD. If affirmed, the administrative order shall specify the evidence supporting the Administrative Law Judge's decision and the action required to satisfy the order.
- EE. The Administrative Law Judge may assign the party who prevails at the Administrative Hearing to prepare findings of fact and conclusions of law.
- FF. An Administrative Law Judge may issue an administrative order that requires a person to cease from violating published County ordinance, policy, or procedure, and to take any necessary corrective action.
- GG. An Administrative Law Judge may order the County to enter the property and abate all violations, including the removal of animals in violation of applicable published County requirements. Whenever an order of abatement is entered, the Administrative Law Judge shall order the responsible person to pay to the County the actual costs of the abatement and the administrative costs of the County to perform the abatement.
- HH. An Administrative Law Judge may revoke a kennel permit, an animal license, the right to possess animals as provided in published County ordinance or policy.
- II. As part of an administrative order, an Administrative Law Judge may establish specific deadlines for the payment of fees and costs, and condition the total or partial assessment of civil fees on the responsible person's ability to take necessary corrective actions by specified

deadlines. Such fees shall continue to accrue until the responsible person complies with the Administrative Law Judge's decision and corrects the violation.

JJ. An administrative order imposing civil fines for failure to abate a violation of the County code by a stated deadline, shall continue to accrue additional fines until the responsible person complies with the Administrative Law Judge's decision and corrects the violation but shall not exceed one thousand dollars (\$1,000.00).

KK. An Administrative Law Judge may schedule subsequent review hearings as may be necessary or as requested by the County to ensure compliance with an administrative order.

LL. An Administrative Law Judge may order a person to post a performance bond to ensure compliance with an administrative order, but only if agreed to by the enforcement official handling the matter for the County.

MM. An Administrative Law Judge may revoke or suspend a beer license, a building permit, or permits for any alteration, repair, or construction pertaining to any existing or new structures or signs on the property, or any permits pertaining to the use and development of real property or a structure where a violation is located as provided in published San Juan County ordinance or policy.

NN. An administrative order shall become final on the date of signing by an Administrative Law Judge.

OO. An administrative order shall be served on all parties.

PP. An Administrative Law Judge may take any action reasonably necessary to obtain compliance with the applicable County ordinances.

QQ. An Administrative Law Judge may assess civil fines and costs of abatement and administrative costs to a responsible person.

#### **1.22.110 - Failure to comply.**

A. It shall be unlawful for any person to fail to comply with the terms and deadlines set forth in a final administrative order.

RR. A violation of this section shall be a class B misdemeanor.

SS. Upon failure of a person to comply with the terms and deadline set forth in the administrative order, the County may use all appropriate legal means to recover the civil penalties and administrative costs to obtain compliance.

#### **1.22.120 - San Juan County Employee Appeal Procedures.**

A. Employee Appeals.

Employee appeals for the County shall consist of the County's Administrative Law Judge appointed or designated pursuant to the procedures set forth in this code.

TT. Non-appealable Actions.

1. No probationary, temporary/seasonal, or part-time employee, or appointed employee has the right to appeal any disciplinary action.
2. No employees have appeal rights for verbal warnings, written reprimands, or involuntary reassignment for disciplinary purposes which do not affect the employee's rate of pay.

3. Unless specifically provided by this section, no employee has the right to appeal a termination, transfer or pay reduction which is made for a non-disciplinary reason, such as a reduction in force, furlough, reorganization, or a broadly applicable reduction in salary which affects multiple employees in a department.
4. No employees have appeal rights for suspension from employment without pay for two (2) days or less.
5. No appeal is allowed from discharge or involuntary reassignment due to loss of state or federal licensure or certifications which are required for the employee's position.

UU. Appealable Rights for Merit Employees.

1. Merit employees have the right to appeal any disciplinary action resulting in:
  - i. Dismissal, termination or release from employment;
  - ii. Demotion;
  - iii. Suspension from employment without pay for more than two (2) days; or Involuntary transfer for a disciplinary purpose to a position with less remuneration.

VV. Appealing to the Administrative Law Judge

1. Employees desiring to file an appeal must submit their written notice of appeal, describing in detail the grounds for the appeal with any supporting documentation, to the County recorder within ten (10) business days following the disciplinary action giving rise to the appeal, or an employee will be deemed to have waived all appeal rights.
2. A copy of the appeal shall also be filed with the employee's supervisor and the human resource department. Upon receipt by the County recorder of the employee's appeal, a date and time shall be set for the Administrative Law Judge to convene a hearing to hear the appeal. All appeal documents will then be forwarded to the Administrative Law Judge.
3. Hearings and decision of the Administrative Law Judge shall be held and rendered as soon as reasonably practicable, with no unreasonable delay. The Administrative Law Judge may allow an enlargement of time for hearing preparations, if good cause is shown, but this subsection may not extend the amount of time during which an appealing employee may timely submit a notice of appeal.
4. All parties to the appeal shall be entitled to appear at the appeals hearing in person and to be represented by counsel, to have the hearing open to the public, to confront witnesses whose testimony is to be considered, and to examine the evidence to be considered by the Administrative Law Judge.
5. The Administrative Law Judge may request the appointment of independent medical or other technical experts, in the Administrative Law Judge's sole discretion, if the Administrative Law Judge believes that the expert's opinion is necessary for the resolution of the case.
6. Submission of Documentation:

- i. All documentation to be presented at the appeals hearing shall be made available by each party upon written request of the party seeking the documentation at least five (5) business days prior to the scheduled hearing date; all requests for documents shall be considered to be ongoing up to and through the time of the hearing.
  - ii. Any party to any appeal may, no later than five (5) business days prior to the date of the appeal hearing or cutoff date for a decision, submit to the Administrative Law Judge a written brief, no more than ten pages in length, with supporting documentation, which articulates that party's arguments and position regarding the subject matter of the appeal.
  - iii. Copies of all written briefs shall be concurrently forwarded to the opposing party, and a reply brief may be submitted in response no later than two (2) business days prior to the hearing date or cutoff date for a decision.
7. The Utah Rules of Evidence, Utah Rules of Civil Procedure, and Utah Administrative Code do not apply to Administrative Hearings. Hearings are conducted to be fundamentally fair to the parties and to provide due process. The Administrative Law Judge may entertain objections in order to maintain decorum and to address issues of relevance.
8. With the exception of a request for an order requiring the release of documents which have been requested or scheduling matters, no prehearing motions shall be entertained by the Administrative Law Judge.
9. In the Administrative Law Judge's discretion, parties may convene for a prehearing conference with the Administrative Law Judge to discuss relevant issues, such as anticipated witnesses or the scope of the appeal.
10. Record of the Hearing. An audio recording of the hearing shall be kept and all exhibits received in evidence at the hearing shall be maintained.

WW. Appeals from Disciplinary Actions. The proceedings for appeals from disciplinary actions are bifurcated.

1. During the first phase of the proceedings, the Administrative Law Judge considers evidence of the charges upon which the discipline was based. The County bears the burden of proving the charges by a preponderance of the evidence.
  - i. If the Administrative Law Judge sustains all of the charges, then it shall proceed to the second phase of the hearing, described herein.
  - ii. If the Administrative Law Judge sustains none of the charges, then the Administrative Law Judge shall overturn the disciplinary action.
  - iii. If the Administrative Law Judge sustains some, but not all, of the charges, then the Administrative Law Judge shall refer the decision back to the department director for reconsideration of the disciplinary decision, in light of the Administrative Law Judge's findings. A referral back to the department director is an interlocutory order, and is not subject to appeal. The department director may decrease the severity of, modify, withdraw, or retain the disciplinary decision previously made. If the department director fails to

respond to the Administrative Law Judge within three (3) business days from the Administrative Law Judge's referral, then the Administrative Law Judge shall proceed as if the department director has not changed the disciplinary decision.

2. During the second phase of the proceedings, the Administrative Law Judge considers whether the misconduct warranted the sanction imposed by the department director. The Administrative Law Judge gives broad deference to the department director's choice of punishment, and reviews that decision for an abuse of discretion. The disciplined employee bears the burden of proving an abuse of discretion by clear and convincing evidence.
  - i. A department director abuses his or her discretion if the sanction is arbitrary, capricious or illegal.
  - ii. When considering whether the sanction is arbitrary, capricious or illegal, the Administrative Law Judge may consider whether the discipline imposed is:
    - a) Disproportionate in light of the circumstances: or
    - b) Inconsistent with previous sanctions imposed by the department upon similarly situated employees pursuant to the department's or County's own policies.
  - iii. If the Administrative Law Judge finds that the disciplined employee has carried the burden of establishing an abuse of discretion, then the Administrative Law Judge shall overturn the disciplinary action.
3. The disciplined employee may waive challenge to either phase of the proceedings at any time. In the absence of a clear, written waiver, the proceedings will proceed through both phases.

XX. Appeals from discharge or reassignment due to fitness for duty determinations.

1. In cases of discharge or transfer to a position of less remuneration due to a determination that the individual is unfit to report to duty due to a medical condition, the employee has the right to appeal that decision.
2. In cases of fitness for duty appeals, the County bears the burden of proving by a preponderance of the evidence that the circumstances warrant the action taken.

YY. The Administrative Law Judge shall render a final decision in writing and may:

1. Sustain the County's action; or
2. Overturn the County's action;
  - i. If the County's action is overturned, the human resource department, or designee, shall remove the record of the overturned action from the employee's personnel file and retain it separately, which record shall be designated as private pursuant to Utah law.
  - ii. The Administrative Law Judge shall reinstate any loss of pay associated with an overturned action, but in the case where an employee has taken

employment elsewhere, the amount shall be reduced by any amounts the employee earned from other employment during this period of time.

- iii. If a department director reduces the severity of the disciplinary decision, then the Administrative Law Judge shall reinstate any loss of pay which would not have been incurred, if the reduced discipline had been initially imposed.

ZZ. The Administrative Law Judge shall transmit a copy of its decision to the employee, the department director, the human resources department, and the County Recorder for certification. The County Recorder shall certify the decision by placing the County's official seal on the document, and the date of certification.

### **1.22.130 – Land Use Appeal.**

- A. A land use decision may be appealed by neighboring property owners and other affected persons.
- B. Utah Code requires that San Juan County, which regulates zoning, create a process to hear appeals from zoning decisions through an appeals hearing process. The County has contracted with an Administrative Law Judge as the hearing officer for the County.
- C. The Administrative Law Judge is authorized to consider appeals of administrative land use decisions, and may grant variances to zoning regulations. The Administrative Law Judge may not amend land ordinances, ignore ordinances, or use “appeals” as a means of waiving required regulations but perform these functions in accordance with Utah Code § 17-27a-701 to 708.
- D. The appellant has the burden of proving that the Planning Commission, Commission, County Administrator or Director of Planning has erred.
- E. The Administrative Law Judge will perform a review of all factual matters regarding the appeal including factual matters on record as to substantial evidence for each essential finding of fact.
- F. The Administrative Law Judge shall determine the correctness of the Planning Commission, Commission, County Administrator or Director of Planning’s interpretation and application of the plain meaning of the land use regulations; and interpret and apply a land use regulation to favor a land use application unless the land use regulation plainly restricts the land use application.
- G. The Administrative Law Judge’s decision is a quasi-judicial act.
- H. Only a decision in which the Planning Commission, Commission, County Administrator or Director of Planning has applied a land use regulation to a particular land use application, person, or parcel can receive an Administrative Hearing.
- I. The decision of the Administrative Law Judge takes effect on the date when the Administrative Law Judge issues a written decision. This written decision will be made in a timely manner and in accordance with the Administrative Law Judge’s Contract.
- J. In accordance with Utah Code § 17-27a-801(2) (a), the written decision, constitutes a final decision or final action Utah Code § 17-27a-801(4).