

**SAN JUAN COUNTY**

**ORDINANCE NO. 2023-03**

**AN ORDINANCE AMENDING AND UPDATING SAN JUAN COUNTY CODE  
PROVISIONS RELATING TO ADMINISTRATIVE APPEALS**

**WHEREAS**, in 2017 San Juan County appointed an Administrative Appeals Judge to review and adjudicate appeals of County administrative actions;

**WHEREAS**, in September 2020 the San Juan County Board of Commissioners adopted a comprehensive administrative review and appeals ordinance;

**WHEREAS**, when the Board of Commissioners, in September 2020, adopted a comprehensive administrative review and appeals ordinance there were inconsistencies between the September 2020 ordinance and other San Juan County Code administrative appeals provisions; and

**WHEREAS**, there are provisions within the September 2020 comprehensive administrative review and appeals ordinance which should be updated to assure San Juan County follows best practices for administrative appeals and are consistent with Utah law.

**NOW, THEREFORE, THE BOARD OF SAN JUAN COUNTY COMMISSIONERS  
ORDAINS THE FOLLOWING:**

Based upon the facts set forth in the Preamble hereto, the Board of Commissioners finds there exists a compelling public interest to enact amendments to the San Juan County ordinances relating to the review and appeal of administrative actions of San Juan County officers and officials. This Ordinance shall take effect upon publication and/or posting as required by law.

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**Amendments to Chapter 11 San Juan County Code**

The name of Chapter 11 of the San Juan County Code is amended as follows.

**CHAPTER 11: ADMINISTRATIVE ~~CITATIONS AND HEARINGS~~ REVIEW AND APPEALS**

Section 11.001 of Chapter 11 is amended as follows.

§ 11.001 PURPOSE AND INTENT.

(A)

The Board of County Commissioners (Board) ~~find~~ finds 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 Board 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 Board 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 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.

(B)

The Board of County Commissioners further finds that an effective San Juan County administrative review process gives property owners, citizens, businesses, and San Juan County an opportunity for an independent review of administrative decisions. An effective administrative review allows the appeal authority to revisit and establish the relevant facts and information, and ensure the proper legal standards are applied. An effective administrative appeal process provides an opportunity for the parties to mediate settlement alternatives, as appropriate. The San Juan County administrative review process safeguards the rights of businesses, property owners, citizens, and associations; identifies and addresses errors in administrative decisions; and reduces the potential for San Juan County legal costs and financial liability associated with protracted litigation.

Section 11.002 of Chapter 11 is amended as follows.

§ 11.002 SCOPE.

(A)

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 Board adopts by ordinance the code enforcement programs.~~

(B)

The appeal remedies contained in this chapter apply to all San Juan County administrative decisions or actions, whether such decisions or actions are based on the San Juan County Code, on adopted rules and regulations, or applicable state statutes, unless the San Juan County Code provision relevant to the administrative decision or action provides for an alternative appeal remedy.

Section 11.005 of Chapter 11 is amended as follows.

§ 11.005 REQUEST FOR ADMINISTRATIVE HEARING. REVIEW

(A) Where the right to an administrative ~~hearing~~ appeal has been established by the County, a person having that right may request an administrative review, if the request is filed within ten business days from the date of service of one of the following:

- (1) Itemized statement of costs, as defined in § 11.004 of this chapter, has been issued in a notice of violation of a code violation to a responsible person;
- (2) Administrative citation, as defined in § 11.004 of this chapter, 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 Law Judge by alleging that there is error in any order, requirement, decision, or determination made by the Planning Commission, Board, County Administrator or Director of Planning in the administration or interpretation of the land use ordinance;
- (4) An administrative process decision, as defined in § 11.004 of this chapter;
- (5) Notice of emergency abatement, as defined in § 11.004 of this chapter, has been issued in a notice of violation of a code violation to a responsible person; or

(6) Notice of any other County action where the right to an administrative hearing review is provided under any published County ordinance or policy.

(B) The request for an administrative hearing review shall be made in writing addressed to the office of the County Clerk/Auditor or to the County Chief Administrative Officer.

(C) 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 review is entitled to relief from the County action;

(3) It shall be accompanied by a copy of the itemized statement of costs, administrative citation, administrative process decision, notice of emergency abatement or other notice of County action for which the hearing review is requested;

(4) It shall contain the name of the person requesting the hearing review and the address to which all notices and orders shall be mailed; and

(5) It shall be dated and signed by the person requesting the hearing review; and

~~—(6) It shall be filed with the County Clerk/Auditor.~~

(D) The County may initiate an administrative hearing review 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 ~~division~~ (D)(1) above;

(3) Personal service; or

(4) Published in a newspaper of general circulation once a week for a period of two weeks.

(E) Within 20 calendar days after receiving a request for an administrative hearing review or the service of a notice of violation and summons, the Administrative Law Judge shall schedule a date, time and place for ~~the~~ an administrative hearing, if required. Failure to hold the hearing within 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 review.

(F) Failure to request an administrative hearing review within ten ~~calendar~~ business days from the date of service of any of the notices in ~~division~~ (E) above shall constitute a waiver of the right to an administrative hearing review and the right to an appeal.

(G) At the discretion of the chief administrative officer, an appeal of a denial by San Juan County, a County department, or County official of a Government Records Access and Management Act (GRAMA) request may be referred to the San Juan County Administrative Law Judge.

(H) Any person adversely affected by a final action of the San Juan County Recorder when applying the statewide standards for County recorders may appeal the action to the San Juan County Administrative Law Judge under this chapter. The party appealing the final action shall set forth any errors (acts or omissions) the County Recorder made in applying the rules adopted by the County Recorder Standards Board established under Utah Code 63C-29-201. Appeals shall be filed with the County Clerk within ten (10) business days of the effective date of the County Recorder's final action.

Section 11.007 of Chapter 11 is amended as follows.

§ 11.007 ADMINISTRATIVE LAW JUDGE; APPOINTMENT, QUALIFICATIONS AND POWERS.

(A) (1) The County ~~Administrator~~ Chief Administrative Officer, with the consent of the County Board, shall appoint an Administrative Law Judge to ~~preside at administrative hearings~~ conduct administrative reviews under this chapter.

(2) 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.

(3) Cause for removal may be for any conduct unbecoming a hearing officer, dereliction of assigned duties or the existence of a systemic bias or conflict of interest that might affect impartiality of decisions.

(4) 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 systemic bias or conflict of interest that might affect impartiality of decisions.

(5) An Administrative Law Judge, in individual administrative reviews, 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.~~ The San Juan County Administrative Law Judge shall not adjudicate/review a matter if he or she is biased or prejudicated with respect to any issue, person, or party; or has a personal interest which impairs his or her ability to fairly address the facts and law in a matter. A motion to disqualify under this rule may be submitted to the San Juan County Administrative Law Judge by any party to an administrative appeal. The Administrative Law Judge shall consider the motion and shall decide whether to proceed with

the adjudication/review or withdraw. The administrative law judge may ask the parties in the matter on appeal to submit briefs, at the discretion of the Administrative Law Judge.

(a) "Bias" means a subjective inclination, bent, or preconceived opinion based on extrajudicial factors (factors other than the law or evidence applicable in a matter under consideration), that impairs a judge from exercising fair and independent judgment regarding an issue, person, or party. Bias does not refer to the possession of a general judicial philosophy.

(b) "Prejudice" means a fixed mental attitude or position of a judge, based on extrajudicial factors (factors other than the law or evidence applicable in a matter under consideration), that impairs the judge from dealing fairly and impartially with an issue, person, or party. The presence or absence of prejudice can be determined by the totality of the circumstances.

(c) "Personal interest" includes family, social, political, financial, or other interests or relationships that influence a judge's judicial conduct or judgment.

(B) (1) An Administrative Law Judge shall have authority to ~~hold~~ conduct an administrative review ~~hearing~~ for violations of Ch. 152 of this code of ordinances and such other matters as specifically designated by published ordinance or policy.

(2) An Administrative Law Judge is a quasi-judicial officer, which includes the authority to investigate and adjudicate the matter on appeal. In all cases, the review of the matter on appeal shall be de novo. The Administrative Law Judge may mediate a resolution of the matter among the parties towards a settlement of the appeal.

(3) An Administrative Law Judge may continue a ~~hearing~~ review 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.

(4) 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.

(5) 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.

(6) The Administrative Law Judge shall have the authority to affirm or reverse, in whole or in part; remand; or modify the administrative decision of a County official.

(7) An Administrative Law Judge has continuing jurisdiction over the subject matter of an administrative hearing review 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 review.

(8) 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.

(9) An Administrative Law Judge shall not make any order that would require or allow a person to violate state law or County ordinance.

(10) An Administrative Law Judge shall not adjudicate or review an appeal of a legislative decision.

Section 11.008 of Chapter 11 is amended as follows.

§ 11.008 PROCEDURES AT ADMINISTRATIVE HEARING PROCESS AND PROCEDURES FOR ADMINISTRATIVE REVIEW

(A) Prior to a hearing on the matter on appeal, the Administrative Law Judge may host pre-hearing conferences for purposes including: addressing standing or other jurisdictional matters; ensuring that the County action was administrative and not legislative; ensuring that the action appealed is final; gathering and reviewing the administrative record upon which the County action was based; requesting additional records or affidavits from the parties relevant to matters raised on appeal or by the Administrative Law Judge's review of the administrative record; addressing procedural motions of the parties; developing the legal framework/standards relevant to the matter on appeal; preparing and publishing a hearing management order; or other appropriate pre-hearing requirements.

(B) For any pre-hearing conference, except for a settlement conference, the Administrative Law Judge shall publish a memorandum which summarizes the issues discussed during the pre-hearing conference, and, if appropriate, publish orders for the parties relating to the matter on appeal. At any time after an appeal is filed, the Administrative Law Judge may order a party to produce documents or other evidence under the party's control if necessary to decide the matter pending before the Administrative Law Judge. At any time, the Administrative Law Judge may take judicial notice of public or generally available facts or information, provided that all parties are informed of the facts or information which the Administrative Law Judge intends to

judicially notice and each party shall be given a reasonable opportunity to refute the facts or information which the Administrative Law Judge intends to judicially notice.

(C) Prior to a hearing, the Administrative Law Judge shall include the parties in the preparation and publication of a hearing management order. That order may include, as appropriate: submission of documents and production of witness lists prior to the hearing; the types of evidence to be considered; swearing of witnesses; under which circumstances, if any, the hearing will be closed to the public; recording of the hearing; representation of the parties; sequencing of the presentation of evidence and making arguments; consequences of a person or party failing to appear at the hearing; issuance of subpoenas, as appropriate; parties' opportunity to confront and cross examine witnesses; the parties' burdens of proof (including affirmative defenses); exclusion of privileged, irrelevant, immaterial, or unduly repetitious evidence; the role of the Administrative Law Judge in questioning witnesses; submission of rebuttal evidence; requests for continuance and how such requests will be handled; and motions and how motions will be handled.

(D) Administrative hearings are intended to be informal in nature. The Utah rules of civil procedure and evidence shall be guidelines for the conduct of the hearing but shall not be binding. Formal rules of evidence and civil procedure, including 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.

(E) The County shall bear the initial burden of proof to establish the existence of a violation of published County ordinances or policies other than those in a land use appeal.

(F) In a land use appeal, the initial burden of proof shall be borne by the appellant.

(G) After a party's initial burden of proof has been met, the Administrative Law Judge shall inform the parties of each party's burdens of proof; based on the matter on appeal, relevant Utah statutes, and relevant Utah case law.

(H) Unless required otherwise by Utah statute or Utah case law, such burden of proof shall be established by a preponderance of the evidence.

(I) 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.

(J) 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.

(K) 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.

~~—(H) 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.~~

(L) Administrative hearings may be held on Mondays through Fridays, excluding County holidays, between the hours of 8:00 a.m. and 9:00 p.m.

Section 11.010 of Chapter 11 is amended as follows.

§ 11.010 ADMINISTRATIVE ORDER; FAILURE TO COMPLY.

(A) (1) A person and the County may enter into a stipulated agreement, which shall be signed by both parties. Such agreement ~~may be~~ shall be reviewed by the Administrative Law Judge and 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.

(2) Within ten business days after all evidence and testimony are presented, the Administrative Law Judge shall issue a written administrative order that ~~affirms, rejects or modifies~~ affirms or reverses, in whole or in part; remands; or modifies the notice of violation and summons, itemized statement of costs, administrative citation, administrative process decision, notice of emergency abatement or other County action.

(3) If affirmed, the administrative order shall specify the evidence supporting the Administrative Law Judge's decision and the action required to satisfy the order.

(4) The Administrative Law Judge may assign the party who prevails at the administrative hearing to prepare findings of fact and conclusions of law.

(5) 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.

(6) 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.

(7) An Administrative Law Judge may revoke a kennel permit, an animal license, or the right to possess animals as provided in published County ordinance or policy.

(8) 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.

(9) 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 ~~\$1,000~~ \$200 for each day the violation remains uncorrected and not to exceed a total of \$3,000 for a violation.

(10) 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.

(11) 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.

(12) 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 County ordinance or policy.

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

(14) An administrative order shall be served on all parties.

(15) An Administrative Law Judge shall assemble and prepare for certification an administrative record which supports the decision on appeal. The administrative record is a compilation and organization of all evidence presented and relied upon in connection with the final administrative decision. Once assembled, the Administrative Law Judge shall submit the administrative record to the County Attorney for certification and filing.

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

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

(B) (1) It shall be unlawful for any person to fail to comply with the terms and deadlines set forth in a final administrative order.

(2) A violation of this section shall be a Class B misdemeanor.

(3) 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.

Section 11.011 of Chapter 11 is amended as follows.

§ 11.011 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.

(B) Non-appealable actions.

(1) No probationary, temporary/seasonal or part-time employee, or appointed employee, has the right to appeal any disciplinary action or other employment 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 or in the County.

(4) No employees have appeal rights for suspension from employment without pay for two 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.

(C) Appealable rights for merit employees. Merit employees have the right to appeal any disciplinary action resulting in:

(1) Dismissal, termination or release from employment;

(2) Demotion;

(3) Suspension from employment without pay for more than two days; or

(4) Involuntary transfer for a disciplinary purpose to a position with less remuneration.

(D) Merit employees have the right to appeal a dismissal, termination, or release from employment, or reassignment to a position with less remuneration, based on the employee's fitness for duty.

(E) 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~~ Clerk or with the Chief Administrative Officer within ten business days following the disciplinary employment 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 division (D)(3) 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) (a) 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 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.

(b) Any party to any appeal may, no later than five 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.

(c) 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 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 pre-hearing motions shall be entertained by the Administrative Law Judge.~~

(8) In the Administrative Law Judge's discretion, parties may convene for a pre-hearing conference with the Administrative Law Judge to discuss relevant issues, such as anticipated witnesses or the scope of the appeal.

(F) 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.

(G) 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.

(a) If the Administrative Law Judge sustains all of the charges, then it shall proceed to the second phase of the hearing, described herein.

(b) If the Administrative Law Judge sustains none of the charges, then the Administrative Law Judge shall overturn the disciplinary action.

(c) 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 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:

(a) A department director abuses his or her discretion if the sanction is arbitrary, capricious or illegal;

(b) When considering whether the sanction is arbitrary, capricious or illegal, the Administrative Law Judge may consider whether the discipline imposed is:

1. Disproportionate in light of the circumstances; or
2. Inconsistent with previous sanctions imposed by the department upon similarly situated employees pursuant to the department's or County's own policies.

(c) 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.

(H) 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.

(I) Rendering decision.

(1) The Administrative Law Judge shall render a final decision in writing and may:

(a) Sustain the County's action; or

(b) Overturn the County's action. 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 state law.

(2) 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.

(3) 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.

(J) Transmission. The Administrative Law Judge shall transmit a copy of its decision to the employee, the department director, the Human Resource Department and the County Recorder for certification. The County Recorder ~~Clerk~~ shall certify the decision by placing the County's official seal on the document and the date of certification.

Section 11.012 of Chapter 11 is amended as follows.

§ 11.012 LAND USE APPEAL.

- ~~—(A) A land use decision may be appealed by neighboring property owners and other affected persons.~~
- ~~—(B) Utah Code requires that the 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 UCA §§ 17-27a-701 to 17-27a-708.~~
- ~~—(D) The appellant has the burden of proving that the Planning Commission, Board of Commissioners, 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, Board of Commissioners, 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 UCA § 17-27a-801(2)(a), the written decision, constitutes a final decision or final action UCA § 17-27a-801(4).~~

- (A) All appeals of a San Juan County land use decision shall be filed and heard by the San Juan County Administrative Law Judge appointed, authorized, and governed by Chapter 11 (Administrative Review and Appeals) of the San Juan County Code.
- (B) Only an applicant of a land use decision or “adversely affected party” as defined under the County Land Use Development and Management Act (CLUDMA) may appeal a final land use decision to the San Juan County Administrative Law Judge.
- (C) Any appeal of a land use decision must be made within ten (10) business days of the decision or of constructive notice thereof, whichever is later.
1. An applicant or adversely affected party must appeal by filing a “Notice of Appeal” with the San Juan County Clerk or Chief Administrative Officer. The Notice of Appeal will include the following: a reason or reasons that the appellant is entitled to relief from the land use decision; a copy of the land use decision; and the name of the appellant with an address to which all notices or orders shall be sent.
  2. A failure to appeal as required by this chapter may result in summary dismissal by the Administrative Law Judge.
- (D) Whenever an appeal is brought by a party other than the applicant or property owner under this Chapter:
1. The applicant and/or property owner of the property in dispute shall be notified of the appeal within fourteen (14) business days after the Notice of Appeal is received by the Administrative Law Judge. A copy of the Notice of Appeal will be provided with the notification.
  2. In addition to the appellant, the applicant or property owner has a right to be approved by the Administrative Law Judge as an intervening party in the appeal.
- (E) The Administrative Law Judge is to review the land use decision. San Juan County is to provide the documentation relied upon in making its decision, and, if applicable, an

official recording if available. Both the appellant and San Juan County may supplement with additional information that may not have been provided by or to San Juan County.

- (F) The scope of the appeal shall be the land use decision being appealed, the grounds for relief raised by the appellant, issues the Administrative Law Judge determines may be raised by a party in court after the final administrative decision, and any requirements of San Juan County ordinances, policies, and procedure.
- (G) The review of factual matters by the Administrative Law Judge shall be de novo. The Administrative Law Judge may request that the parties narrow the factual matters or issues which are subject to de novo review.
- (H) The Administrative Law Judge shall: presume that the land use decision of a land use authority is valid; and uphold the land use decision unless the land use decision is: (A) arbitrary and capricious; or (B) illegal.
1. For purposes of appeal: A land use decision is arbitrary and capricious if the land use decision is not supported by substantial evidence in the record.
  2. A land use decision is illegal if the land use decision is:
    - a. based on an incorrect interpretation of the land use regulation; or
    - b. contrary to law.
- (I) If multiple land use decisions were made and timely appealed regarding the same subject property and are subject to inseparable interests by nature of the same project, property at issues, or the alleged injury to be caused, those shall be consolidated into a single appeal before the Administrative Law Judge.
- (J) The Administrative Law Judge may reverse the land use decision, affirm the land use decision, affirm in part and/or reverse in part, modify a condition or requirement, attach conditions or requirements, remand the land use decision to the land use authority, and make any such order as ought to be made consistent with its decision.
- (K) On a question of law pertaining to the interpretation of CLUDMA, the Administrative Law Judge may request an opinion from the County Attorney's Office prior to issuing any final decision on an appeal. The legal opinion will be provided in writing to all parties and become part of the appeal record. The legal opinion is not the final decision

and is not binding on the Administrative Law Judge. The Administrative Law Judge must issue a written final decision.

(L) The Administrative Law Judge may grant variances to San Juan County land use or zoning ordinances.

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### **Amendments to Chapter 31: Officials and Organizations**

Chapter 31 is amended by the addition of the following section.

#### § 31.080 REVIEW AND APPEALS OF HEALTH DEPARTMENT ADMINISTRATIVE DECISIONS

Administrative actions or decisions of the Board of Health, the Health Officer, or Health Department shall be appealed to the Administrative Law Judge under Chapter 11 of the San Juan County Code.

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### **Amendments to Chapter 32: Personnel Regulations**

Section 32.121 of Chapter 32 is amended as follows.

A) Step 1: suspension hearing.

(1) (a) The employee who has been recommended for suspension shall within five working days, not including the day of receipt of notice recommending suspension, request in writing a hearing before his or her department head/elected with a copy sent to the Human Resources Director.

(b) If an employee does not request a hearing, the department head/elected official shall issue a written notice to the employee and Human Resource Director imposing or not imposing the suspension without a hearing.

(2) (a) If an employee does request a hearing, and if he or she so desires, he or she may designate a representative to attend, but not participate in the pre-hearing, and the employee shall provide to the Human Resources Director the name of the employee's representative at least one working day prior to the pre-hearing.

(b) After the employee has had the opportunity to meet with his or her department head/elected official and explain his or her side of the matter, the department head/elected

official shall promptly, ~~but no later than five working days after the hearing,~~ render a decision in writing and forward a copy of the decision to the Human Resources Director. The decision shall include a statement as to the reasons the suspension or transfer was or was not imposed.

(B) Step 2: appeal.

(1) An employee, who after a hearing and written decision of his or her department head/elected official has been deemed suspended and does not agree with this written decision shall within ~~five~~ ten working days of receipt of the department head/elected official's written decision file a written request with the Human Resource Director for an appeal before an ~~independent hearing officer~~ the San Juan County Administrative Law Judge. The Human Resource Director will forward the request to the ~~hearing officer and the employee's department head/elected official, and others as needed~~ San Juan County Administrative Law Judge.

(2) ~~While the employee may choose to have a representative attend a hearing with them for consultation, the hearing officer may require the employee to present his or her appeal, including, but not limited to, presenting any evidence, testimony or answering questions directly, and may limit or restrict the employee's representative from presenting the appeal, including, but not limited to, presenting evidence, testimony or answering on behalf of the employee. The review and hearing of the appeal shall be conducted pursuant to the procedures adopted in San Juan County Code Chapter 11.~~

Section 32.122 of Chapter 32 is amended as follows.

(A) Step 1: demotion/termination hearing.

(1) The employee who has been recommended for demotion or termination shall within five working days, not including the day of receipt of notice recommending demotion or termination, request in writing a hearing before his or her department head/elected official with a copy of the request sent to the Human Resources Director. Failure on the part of the employee to request a hearing in writing before his or her department head/elected official or to appear at a scheduled pre-hearing will serve as a waiver of the employee's grievance. If an employee has waived a hearing, the department head/elected official shall issue a written notice to the employee and Human Resource Director imposing or not imposing the demotion or termination.

(2) If an employee requests a hearing, the employee will be given at least three working-days' notice of the hearing date, time and location. The hearing shall be the conducted by department head/elected official or his or her respective designee. If desired by the employee, he or she may designate a representative to attend but not participate in the hearing, and the employee shall provide to the Human Resources Director the name of the employee's representative at least one working day prior to the hearing. Attendees of the hearing shall include the employee and his or her representative, the department head/elected official or his or

her respective designee, a management representative and a representative of the Human Resources Office. The hearing will not follow the formal rules of evidence and will be conducted in an informal manner. The management representative shall summarize the disciplinary notice. The employee may then respond to all specific charges.

(3) The department head/elected official will promptly, ~~but no later than five working days after the hearing,~~ render a decision in writing and forward to the employee and the Human Resources Director a copy of the decision. The decision shall include a statement as to the reasons the demotion or termination was or was not imposed.

(B) Step 2: appeal.

(1) An employee, who, after a hearing and written decision of his or her department head/elected official, has been deemed demoted or terminated and does not agree with this written decision shall within ~~five~~ ten working days of receipt of the department head/elected official's written decision file a written request with the Human Resource Director for an appeal before ~~an independent hearing officer~~ the San Juan County Administrative Law Judge. The Human Resource Director will forward the request to the ~~hearing officer and the employee's department head/elected official, and others as needed.~~ the San Juan County Administrative Law Judge.

(2) ~~While the employee may choose to have a representative attend a hearing with them for consultation, the hearing officer may require the employee to present his or her appeal, including but not limited to presenting any evidence, testimony or answering questions directly, and may limit or restrict the employee's representative from presenting the appeal, including, but not limited to, presenting evidence, testimony or answering on behalf of the employee. The review and hearing of the appeal shall be conducted pursuant to the procedures adopted in San Juan County Code Chapter 11.~~

Section 32.123 (Employee grievances) of Chapter 32 is amended as follows.

The grievance procedure for the application of express terms of this chapter which deprive an employee of accrued and/or existing pay and/or benefits or that is related to any adverse action taken against him or her for reporting governmental waste or legal violations is as follows.

(A) Step 1. An employee that has completed his or her orientation period who believes that he or she has a grievance relating to the application of the express terms of these policies and procedures which deprive him or her of accrued and/or existing pay and/or benefits or that is related to any adverse action taken against him or her for reporting governmental waste or legal violations in violation of § 32.107 shall reduce the grievance to writing and submit it to the employee's department head, with a copy sent to the Human Resource Director, within ten working days of the alleged violation. The grievance shall state the violation and cite the policies

and procedures section. Upon receipt of the grievance, the department head/elected official will provide the employee an opportunity to meet him or her and will then promptly respond to the grievance in writing. If desired by the employee, he or she may designate a representative to attend but not participate in the hearing, and the employee shall provide to the Human Resources Director the name of the employee's representative at least one working day prior to the hearing. The department head/elected official's grievance response must be consistent with County human resource systems, programs, procedures and practices as established by this chapter and/or by the Human Resource Department.

(B) Step 2.

—(1) If the grievance is not settled after following the procedure described in division (A) above, the employee may file within ~~five~~ ten working days of receipt of the department head/elected official decision a written request to the Human Resource Director for review ~~before an independent hearing officer~~ by the San Juan County chief administrative officer. The Human Resource Director will forward the request to the ~~hearing officer and the department head~~ chief administrative officer. At the discretion of the chief administrative officer, an employee grievance may be referred to the Administrative Law Judge for review.

—(2) ~~While the employee may choose to have a representative attend a hearing with him or her for consultation, the hearing officer may require the employee to present their grievance, including but not limited to presenting any evidence, testimony or answering questions directly, and may limit or restrict the employee's representative from presenting the grievance, including but not limited to presenting evidence, testimony or answering on behalf of the employee. The employee may not raise any issue with the procedure described in division (B) that he or she did not raise in division (A).~~

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**Amendments to Chapter 33: Finance and Revenue; Taxation.**

Section 33.002 3 (Board of Equalization Standards of Practice) of Chapter 33 is amended as follows.

A) The County adopts by reference the State Tax Commission's Board of Equalization Standards of Practice. These rules are supplemented by relevant provisions in UCA §§ 59-2-1001 through 1006 and 59-2-1017 (hereafter section refers to the Utah Code); U.A.C. R884-24P-66 (County Board of Equalization Procedures and Appeals) and State Tax Commission Standards of Practice (Procedures and Guidelines for Boards of Equalization). The San Juan County Board of Commissioners, acting as the San Juan County Board of Equalization, may assign the San Juan County Administrative Law Judge to review and hear appeals filed under San Juan County Code Chapter 33: Finance and Revenue; Taxation. Such review and hearings by the Administrative

Law Judge shall be conducted pursuant to San Juan County Chapter 11 (Administrative Citations and Hearings). The San Juan County Administrative Law Judge shall attend and complete training offered by the Utah State Tax Commission relevant to the review and hearing of appeals under Chapter 33 of the San Juan County Code.

(B) The County shall use the most current version of the Board of Equalization Standards of Practice issued by the State Property Tax Division.

Section 33.059 (Appeals) (Transient Room Tax) of Chapter 33 is amended as follows.

(A) Any party aggrieved by any action of the County relating to the assessment, auditing, calculation or collection of the tax including any notice of deficiency issued by the County, may request a hearing by filing a written request for redetermination and hearing with the County Clerk/Auditor no later than 30 days after the effective date of the County's action or the date of issuance of the notice of deficiency. The appeal herein shall be reviewed and heard by the County's Administrative Law Judge pursuant to San Juan County Code Chapter 11 (Administrative Review and Appeals).

(B) The party shall have an additional right of administrative appeal to the state's Tax Commission in accordance with UCA § 59-12-302.

Section 33.099 (Procedures for Contesting Bids and Sales) of Chapter 33 is amended as follows.

Any person wishing to contest any action taken in connection with the tax sale must present such protest to the Board of County Commissioners, by filing a written notice of contest through the Clerk/Auditor's office within ten calendar days of the date of the tax sale. The protest shall be reviewed and heard by the County's Administrative Law Judge pursuant to San Juan County Code Chapter 11 (Administrative Review and Appeals).

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### **Amendments to Chapter 34: Purchasing Policy.**

Section 34.062 (Protests) of Chapter 34 is amended as follows.

Protests to the bidding process shall be submitted to the chief administrative officer in writing within five business days. The chief administrative officer will respond to the protest within five business days of receiving the complaint. ~~The chief administrative officer's decision may be appealed to the County Board of Commissioners in writing within five business days. The County Board of Commissioners may address the appeal at its next regularly scheduled meeting or hold a special meeting to evaluate the merits of the protest appeal.~~ The chief administrative officer's decision may be appealed to the San Juan County Administrative Law Judge in writing within ten (10) business days. The San Juan County Administrative Law Judge shall review and

hear the bid protest pursuant to San Juan County Code Chapter 11 (Administrative Review and Appeals).

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**Amendments to Chapter 35: Constitutional Takings.**

Section 35.005 (Appeals) of Chapter 35 is amended as follows.

Any owner of private property whose interest in the property is subject to a physical or regulatory taking by the County, pursuant to a final and authoritative decision or action by the County, may appeal the County's decision or action by filing a written notice of appeal and statement of the grounds for the appeal in the County Clerk/Auditor's office within 30 days from the date of the County's final decision or action. ~~The County Commission shall hear all evidence regarding the appeal and render its decision and findings in writing within 14 days from the date the appeal was filed. If the County fails to hear and decide the appeal within 14 days, the County's final decision or action is presumed to be approved.~~ The appeal shall be reviewed and heard by the San Juan County Administrative Law Judge pursuant to San Juan County Code Chapter 11 (Administrative Review and Appeals).

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**Amendments to Chapter 90: Health and Sanitation; Nuisances.**

Section 90.004 (Right to a Hearing) of Chapter 90 is amended as follows.

Consistent with UCA Title 4, Ch. 17, § 111, any person receiving notice of a complaint may request a hearing to the Weed Control Board (or to the ~~County legislative body~~ San Juan County Administrative Law Judge, if there is not a standing Weed Control Board) by filing a request, in writing, with the County Administrator within ten days of receiving notice of the complaint from the County. Appeals from a decision from the Weed Control Board shall be consistent with UCA Title 4, Ch. 17, § 111.

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**Amendment to Chapter 91: Animal Control**

The following section is added to Chapter 91.

§ 91.011 Appeals

An impoundment, a notice of violation, a citation, or administrative process decision issued in accordance with this Chapter may be appealed to the San Juan County Administrative Law Judge in accordance with Chapter 11 of the San Juan County Code.

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**Amendment to Chapter 93: Fire Prevention**

The following section is added to Chapter 93.

§ 93.008 Appeals

A denial or revocation of a permit, a citation, or administrative process decision issued in accordance with this Chapter may be appealed to the San Juan County Administrative Law Judge in accordance with Chapter 11 of the San Juan County Code.

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**Amendments to Chapter 110: General Licensing**

Section 110.007 (Denials of License) of Chapter 110 is amended as follows.

(A) In the event the Economic Development Office shall deny any application for a business license, ~~the reason therefor shall be endorsed on the application by the Chairperson of the County Board of Commissioners, and the Economic Development Office shall return the fee deposited with a copy of the application to the applicant together with notice that the applicant may appear before the Board of County Commissioners within 45 days of the denial or revocation for the purpose of presenting reasons for setting aside such denial. If the applicant makes such appearance and shows by a preponderance of evidence that he or she should be licensed, the Board shall set aside the denial and approve the application. If the Board of County Commissioners denies the request, appeals can be made to District Court. or shall revoke a business license, the applicant or business owner may appeal the denial or revocation to the San Juan County Administrative Law Judge pursuant to San Juan County Code Chapter 11.~~

(B) The Economic Development Office may deny or revoke any license upon finding that any person, firm or corporation or any employee of said firm or corporation licensed under this chapter has been convicted of a felony, or that false information has been given in the license application or that the business is being operated in a manner detrimental to the public good, may revoke that business license. The business license fee shall not be refunded.

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### **Amendments to Chapter 111: Alcoholic Beverages**

Section 111.027 of Chapter 111 is amended as follows.

(A) Licenses may be suspended or revoked by the Board of Commissioners for the violation on the licensed premises of any provision of this chapter, or of any other applicable ordinance or law relating to alcoholic beverages, or if the person to whom the license was issued no longer possesses the qualifications required by this chapter and the statutes of the state. Any license suspension or revocation by the Board of Commissioners may be appealed to the San Juan County Administrative Law Judge pursuant to San Juan County Code Chapter 11.

(B) All licenses issued pursuant to this chapter may be suspended and the premises closed by the Sheriff without prior hearing. At the time of a suspension, notice shall be given to the licensee of his or her right to ~~petition the Board of County Commissioners for a prompt hearing within ten days from the date of such suspension; and the cause, or causes, for such suspension shall be listed on the notice of closure. If cause for the suspension is established at the hearing, the suspension order may be continued for up to one year in duration. However, no license shall be revoked or suspended beyond the initial hearing without first establishing cause therefor, nor shall any license be revoked without first giving the licensee an opportunity for hearing on the cause specified for revocation.~~ appeal the suspension to the San Juan County Administrative Law Judge pursuant to San Juan County Code Chapter 11.

(C) It shall be unlawful for any person to sell beer at the licensed premises during the period of suspension or after the revocation of his or her beer license.

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**Amendment to Chapter 150: Building Regulations; Construction**

The following section is added to Chapter 150.

§ 150.003 Appeals

An administrative process decision or administrative enforcement action issued in accordance with this Chapter may be appealed to the San Juan County Administrative Law Judge in accordance with Chapter 11 of the San Juan County Code.

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**Amendment to Chapter 152: Subdivision**

The following section is added to Chapter 152.

§ 152.009 Appeals

An administrative process decision or administrative enforcement action issued in accordance with this Chapter may be appealed to the San Juan County Administrative Law Judge in accordance with Chapter 11 of the San Juan County Code.

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**Amendments to Chapter 152: Zoning**

Section 152.041 is amended as follows.

§ 153.041 APPEALS.

~~—(A) Appeal Authority. The authority to hear request for variances from the terms of the land use ordinance and appeals from decisions applying the land use ordinances shall be vested in the Board of County Commissioners.~~

~~—(B) Appealing land use authority's decision. An applicant, board or officer of the County, or any person affected by the land use authority's decision applying a land use ordinance may, within the time period provided in division (B)(3) below, appeal that decision to the Appeal Authority by alleging there is error in any order, requirement, decision or determination made by the land use authority in the decision applying the land use ordinance.~~

~~—(1) Time to appeal. Any appeal, pursuant hereto, must be filed in writing to the County Administrator within ten calendar days of the issuance of the written decision applying the land use ordinance.~~

~~—(2) Time for hearing appeal. The Appeal Authority should hear the appeal within 30 days of the date the appeal was filed.~~

~~—(3) Written statement setting forth theories of relief required. The appellant shall deliver to the Appeal Authority and all other participants, five business days prior to the hearing, a written statement setting forth each and every theory of relief she intends to raise at the hearing, along with a brief statement of facts in support thereof.~~

~~—(4) Condition precedent to judicial review.~~

~~—(a) No person, board or officer of the County may seek judicial review of any decision applying to the land use ordinance until after challenging the land use authority's decision in accordance with this part.~~

~~—(b) No theory of relief may be raised in the District Court unless it was timely and specifically presented to the Appeals Authority.~~

~~—(5) Standard of review and burden of proof on appeal.~~

~~—(a) The Appeal Authority shall upon appeal, presume that the decision applying the land use ordinance is valid and determine only whether or not the decision is arbitrary, capricious or illegal.~~

~~—(b) The burden of proof on appeal is on the appellant.~~

~~—(6) Due process rights. The Appeal Authority shall respect the due process rights of all participants.~~

Appeals of land use decisions under this chapter shall be filed, reviewed, and heard by the Administrative Law Judge under Chapter 11 of the San Juan County Code.

Section 152.042 is amended as follows.

§ 153.042 VARIANCES.

(A) Any person or entity desiring a waiver or modifications of the requirements of a land use ordinance as applied to a parcel of property that he or she owns, leases, or in which he or she holds some other beneficial interest may apply to the Appeal Authority San Juan County Administrative Law Judge for a variance from the terms of the ordinance.

(B) Pursuant to state law, the Appeal Authority San Juan County Administrative Law Judge may grant a variance only if:

(1) Literal enforcement of the ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the land use ordinances;

(2) There are special circumstances attached to the property that do not generally apply to other properties in the same zone;

(3) Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zone;

(4) The variance will not substantially affect the general plan and will not be contrary to the public interest; and

(5) The spirit of the land use ordinance is observed and substantial justice done.

(C) In determining whether or not enforcement of the land use ordinance would cause unreasonable hardship hereunder, the Appeal Authority may not find an unreasonable hardship unless the alleged hardship:

(1) Is located on or associated with the property for which the variance is sought; and

(2) Comes from circumstances peculiar to the property, not from conditions that ~~are~~ are general to the neighborhood.

(D) In determining whether or not enforcement of the land use ordinance would cause unreasonable hardship under division (C) above, the ~~Appeal Authority~~ San Juan County Administrative Law Judge may not find an unreasonable hardship if the hardship is self-imposed or economic.

(E) In determining whether or not there are special circumstances attached to the property under division (B) above, the ~~Appeal Authority~~ San Juan County Administrative Law Judge may find that special circumstances exist only if the special circumstances:

(1) Relate to the hardship complained of; and

(2) Deprive the property of privileges granted to other properties in the same zone.

(F) The applicant shall bear the burden of proving that all of the conditions justifying a variance have been met.

(G) Variances run with the land.

(H) The ~~Appeal Authority~~ San Juan County Administrative Law Judge may not grant a use variance.

(I) In granting a variance, the ~~Appeal Authority~~ San Juan County Administrative Law Judge may impose additional requirements on the applicant that will:

(1) Mitigate any harmful affects of the variance; or

(2) Serve the purpose of the standard or requirement that is waived or modified.

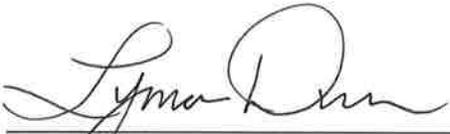
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**PASSED AND ADOPTED** by action of the Board of San Juan County Commissioners for San Juan County in an open meeting this 16<sup>th</sup> day of May 2023.

Voting Aye: 3

Voting Nay: \_\_\_\_\_

ATTEST:

  
\_\_\_\_\_  
Lyman Duncan, Clerk/Auditor

SAN JUAN COUNTY BOARD OF COMMISSIONERS

  
\_\_\_\_\_  
Bruce Adams, Chair