

CHAPTER 1 TITLE, PURPOSE, AUTHORITY, APPLICABILITY, JURISDICTION, TRANSITION, INTERPRETATION, AND SEVERABILITY

ARTICLE 1-1 TITLE, PURPOSES, AUTHORITY, APPLICABILITY, AND JURISDICTION

Division 1-1-1 Title and Purposes

Sec. 1-1-1-1 Title

The City of Durango Land Use and Development Code is herein referred to as "the Durango Land Use and Development Code," "LUDC," or "this Code."

Effective on: 7/1/2014

Sec. 1-1-1-2 Purposes

- A. **Generally.** The regulations of this LUDC shall be for the purpose of promoting the health, safety, convenience, order, prosperity, and general welfare of the present and future inhabitants of the City of Durango, Colorado, by using the City's home rule, constitutional, and statutory powers to:
1. Implement the City's adopted Comprehensive Plan and other adopted plans, as contemplated by Article VIII, Sections 1 and 2, of the Home Rule Charter of the City of Durango, Colorado, which plans:
 - a. Reflect the shared values of the City with respect to the character, form, and function of its future development; and
 - b. Promote planned, logical, fiscally and environmentally responsible, and orderly development and redevelopment within the City and other areas that may be subject to the City's regulatory authority pursuant to interlocal agreements (and conversely, to prevent scattered and / or haphazard suburban and ex-urban growth);
 2. Establish zoning districts and development standards that enhance opportunities for the use and development of property in furtherance of the objectives of:
 - a. Creating convenient and beneficial clusters of uses, including business and shopping facilities, where reasonably necessary and desirable for the public convenience and welfare; and
 - b. Mixing residential uses with business and commercial uses to foster economic and social benefits to the community and to property owners, and to increase the inventory and diversity of housing stock; and
 - c. Supporting the long-term viability and durability of stable, established residential, business, and commercial areas of the City by protecting their physical and functional integrity and character;
 3. Conserve and enhance economic, social, cultural, recreational, and aesthetic property values;
 4. Use the zoning districts to protect and enhance the character of the City by directly regulating essential elements of the desired character;

5. Ensure adequate light and air, maintain open spaces, and implement design standards in appropriate locations;
 6. Promote context-sensitive redevelopment and infill development;
 7. Provide for a variety of housing opportunities for a diverse population;
 8. Diversify and improve transportation options through enhancing multimodal transportation choices, balancing land uses, managing access, linking land use and transportation, and other appropriate measures;
 9. Protect the City's tax base by enhancing business opportunities and increasing property values through promoting quality building improvements, infill development, and redevelopment;
 10. Facilitate adequate, efficient, and cost-effective provision of transportation, water, sanitary sewer, schools, parks, stormwater conveyance and treatment, and other public and private facilities and services;
 11. Protect the public treasury from unnecessary expenditures of resources due to, for example, unmitigated impacts of development, underutilization of existing infrastructure, or unnecessarily large lengths or widths of pavement that must be maintained by the City;
 12. Promote public safety by securing safety from fire and other dangers through appropriate site design and adequate infrastructure;
 13. Protect and conserve key natural resources, including water resources;
 14. Promote responsible development patterns and the sustainable use of renewable resources as an alternative to the use of nonrenewable resources;
 15. Enhance coordination with independent providers of public services (e.g., fire protection, water, sewer, schools, recreation, and drainage) in the City;
 16. Prevent unduly offensive and/or injurious substances, conditions, and operations; and
 17. Provide for efficient and fair development approval procedures that respect property rights and ensure quality development.
- B. **Specific Purposes.** Specific purposes of the various Chapters, Articles, Divisions, and Sections of this LUDC may be expressed therein.

Effective on: 7/1/2014

Sec. 1-1-1-3 Statement of Policy with Respect to Marijuana Uses

- A. **Findings.** The City Council finds that:
1. Marijuana is a controlled substance under federal law, and possession of marijuana is prohibited by federal law.
 2. The voters of the State of Colorado have approved a constitutional amendment to the State Constitution to allow for persons with "debilitating medical conditions" to use medical marijuana. The will of the voters is reflected in Article XVIII, Section 14 of the Colorado Constitution. That Section of the Colorado Constitution is further implemented and further regulated by C.R.S. § 12-43.3-101, *et seq.*
 3. The voters of the State of Colorado have approved a constitutional amendment to the State Constitution to legalize, under state law, the personal use of marijuana by persons over the age of 21. However, part of the amendment, reflected in Article XVIII, Section 16(5)(f) of the Colorado Constitution, provides, "A locality may prohibit the operation of marijuana cultivation facilities, marijuana product manufacturing facilities, marijuana testing facilities, or retail marijuana stores through the enactment of an ordinance"
 4. The United States Constitution, in Article VI, *Debts, Supremacy, Oaths*, provides in part, "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding. The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution"

5. Marijuana is a Schedule I controlled substance under 21 U.S.C. § 812. Possession and sale of marijuana is illegal under federal law. (See 21 U.S.C. § 841, *et seq.*) Violators of U.S. Code are subject to criminal and civil penalties under Federal law.
 6. The United States Department of Justice ("U.S. DOJ") issued a memorandum on October 19, 2009 regarding U.S. DOJ policy on enforcement of the Federal Controlled Substances Act in states that allow medical marijuana under state law. In that memorandum, Deputy Attorney General David Ogden writes, in pertinent part:
 - a. "Of course, no State can authorize violations of federal law Accordingly, in prosecutions under the Controlled Substances Act, federal prosecutors are not expected to charge, prove, or otherwise establish any state law violations."
 - b. "This guidance regarding resource allocation does not 'legalize' marijuana or provide a legal defense to a violation of federal law, nor is it intended to create any privileges, benefits, or rights, substantive or procedural, enforceable by any individual, party, or witness in any administrative, civil, or criminal matter."
 - c. "Nor does clear and unambiguous compliance with state law . . . create a legal defense to a violation of the Controlled Substances Act."
 7. In response to the reallocation of investigative and prosecutorial resources of the U.S. DOJ, medical marijuana uses have proliferated in Colorado.
- B. Notice.** Marijuana, medical and otherwise, is a controlled substance under federal law. Therefore, applicants, investors, employees, and others associated with the use are on notice that, among other things:
1. If the U.S. DOJ chooses a different allocation of its investigative and prosecutorial resources:
 - a. The federal government may be more likely to prosecute those individuals who are found in violation of the Controlled Substances Act and any other applicable federal criminal laws;
 - b. Owners of medical marijuana or other marijuana businesses may be subject to penalties under federal law, including incarceration, fines, and forfeitures, including forfeiture of the building in which the use is located and the contents thereof.
 2. Insurance companies could deny coverage, including (among other things) coverage for casualty losses or personal injuries, based on violations of the Controlled Substances Act.
 3. Lenders could, at any time, determine that the use is unlawful and exercise any rights they may have under the terms of the loan, which in some cases may include a demand for immediate repayment of the entire loan balance.
- C. No Right to Continued Use; No Vested Rights; No Compensable Rights.**
1. Based on the shift in U.S. DOJ policy and the state of Colorado law, this LUDC allows marijuana uses according to the regulatory program authorized under Colorado law. However, while marijuana (medical and otherwise) remains a controlled substance under federal law, no approval pursuant to this LUDC shall be construed to create any enforceable or compensable property right to the establishment or continuation of a medical marijuana use under any circumstances.
 2. No approval by the City shall be construed to introduce liability to the City for any consequential harms to the applicant or those associated with the proposed medical marijuana use, including but not limited to business owners, investors, employees, land owners, insurance companies, lenders, or patients.
- D. Marijuana Land Uses Prohibited.** The City of Durango exercises its right pursuant to Article XVIII, Section 16(5)(f) of the Colorado Constitution and prohibits the operation of marijuana cultivation facilities and marijuana product manufacturing facilities as defined in Article XVIII, Section 16 of the Colorado Constitution.

Effective on: 7/1/2014

Sec. 1-1-1-4 Purposes with Respect to Sexually-Oriented Businesses

A. Findings. The City Council finds that:

1. Sexually-oriented businesses cause adverse secondary effects, which are recognized by the U.S. Supreme Court (in cases such as *Young v. American Mini Theatres*, 426 U.S. 50 (1976), *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986), *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215 (1990)) as impacting substantial governmental interests in health, safety and welfare.
2. In *City of Erie v. Pap's A.M.*, 120 S. Ct. 1382 (2000), the U.S. Supreme Court held that a city may rely upon cases such as *City of Renton v. Playtime Theatres, Inc.* to provide a sufficient evidentiary basis to find that a single sexually-oriented business will cause adverse secondary effects on a neighborhood.
3. Other cases, such as *City of Littleton v. Z.J. Gifts*, 541 U.S. 774 (2004), *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560 (1991), *Essence, Inc. v. City of Federal Heights*, 285 F.3d 1272 (10th Cir. 2002), *Z.J. Gifts D-2, L.L.C. v. City of Aurora*, 136 F.3d 683 (10th Cir. 1998), *O'Connor v. City and County of Denver*, 894 F. 2d 1210 (10th Cir. 1990), *City of Colorado Springs v. 2354 Inc.*, 896 P.2d 272 (Colo. 1995), *7250 Corp. v. Board of County Comm'rs for Adams County*, 799 P. 2d 917 (Colo. 1990), and *Marco Lounge, Inc. v. City of Federal Heights*, 625 P.2d 982 (Colo. 1981), have upheld reasonable regulations of sexually-oriented businesses.
4. Other communities have studied the negative secondary impacts of sexually-oriented businesses. These communities include, but are not limited, to Adams County, Colorado; Dallas, Texas; Denver, Colorado; Garden Grove, California; Whittier, California; Indianapolis, Indiana; St. Paul, Minnesota; Los Angeles, California; Islip, New York; Ellicottville, New York; Las Vegas, Nevada; Rome City, Georgia; Houston, Texas; New York, New York; Oklahoma City, Oklahoma; Phoenix, Arizona; and Tucson, Arizona.
5. The American Center for Law and Justice also completed a study on the secondary effects of such uses, dated March 1996.
6. Secondary effects of sexually-oriented businesses may include any or all of the following, which have a material effect on the health, safety, and welfare of City residents:
 - a. Particularly when they are located in close proximity to each other, sexually-oriented businesses are indicia of urban blight, which downgrade the quality of life in the adjacent area;
 - b. Sexually-oriented businesses have a deleterious effect on both neighboring businesses and surrounding residential areas, as they are regularly related to an increase in crime and a decrease in property values;
 - c. Sexually-oriented businesses commonly require special supervision from public safety agencies in order to protect public health, safety and welfare, including that of the patrons of such businesses;
 - d. Studies and experience show that in the absence of regulation of sexually-oriented businesses, significant criminal activity, including prostitution, narcotics and liquor law violations, have historically and regularly occurred;
 - e. Sexually-oriented businesses are frequently used for unlawful and unhealthful sexual activities, including prostitution and sexual liaisons of a casual nature, and the concern over sexually transmitted diseases, including HIV, is a legitimate health concern of the City;
 - f. Sexually-oriented businesses lend themselves to ancillary unlawful and unhealthy activities that are often uncontrolled by the operators of the establishments; and
 - g. Children and minors may be harmed by exposure to the secondary effects of sexually-oriented businesses, including those encountered when children walk through or visit in the immediate neighborhood of such businesses.
7. The City wishes to minimize and control adverse effects and thereby protect the health, safety and welfare of the citizens; preserve the quality of life; preserve the property values and character of surrounding neighborhoods; deter the spread of urban blight; and protect the citizens from increased crime.
8. It is not the intent of this LUDC to suppress any speech protected by the First Amendment, but to enact content-neutral regulations that address the secondary effects of sexually-oriented businesses. To this end, the regulations in this LUDC that apply specifically to sexually-oriented businesses impose restrictions which are not

greater than necessary to further the City's substantial interest in preventing adverse secondary effects attributable to such businesses.

B. Purposes.

1. The purpose of the regulations in this LUDC that apply specifically to sexually-oriented businesses is to set reasonable and uniform regulations to prevent the deleterious location and siting of such businesses, and to ensure that site and building design techniques are used to minimize secondary effects, for example, by limiting views into areas of a building in which the business is operated.
2. The regulations have neither the purpose nor the effect of imposing a limitation or restriction on the content of any communicative materials, including sexually-oriented materials. Similarly, it is not the intent nor effect of the regulations to restrict or deny access by adults to those sexually-oriented materials that are protected by the First Amendment.
3. This LUDC shall not be interpreted to condone or legitimize the distribution of obscene material or other comparable material that is not protected by the First Amendment.

Effective on: 7/1/2014

Division 1-1-2 Authority, Applicability, and Jurisdiction

Sec. 1-1-2-1 Authority

- A. **Generally.** The provisions of this LUDC are authorized as provided in this Section. The City may be authorized or required to act in additional areas from time to time. This Section is not intended, in any way, to limit the City's ability to accept such additional authorizations or requirements.
- B. **City Charter.** In general, the LUDC is authorized by [Article VIII, Section 2 \(Land Use and Development Regulations\), of the Home Rule Charter of the City of Durango, Colorado](#). All provisions herein that affect the area within the corporate boundaries of the City of Durango and are neither matters of statewide concern nor preempted by federal law are authorized by [Article I, Section 2 \(Powers of the City\), of the Home Rule Charter of the City of Durango, Colorado](#), pursuant to [Article XX, Section 6 \(Home Rule for Cities and Towns\), Colorado Constitution](#). This includes provisions that are listed in Subsection E., below, as authorized by the Colorado Revised Statutes, in cases in which provisions that are declared by the State Legislature as "matters of statewide concern" are subsequently either repealed, amended to remove the declaration of "matter of statewide concern," or adjudicated by a court of competent jurisdiction to *not* be "matters of statewide concern."
- C. **Comprehensive Plan.** The City Charter includes "planning" and requires the adoption of a "comprehensive plan" by the City Council. Once adopted, the comprehensive plan is to serve as a "guide for all future staff, Planning Commission, and City Council action concerning land use and development regulations" and requires that "all proposed annexations shall be in compliance with the comprehensive plan."
- D. **Intergovernmental Agreement.** Some provisions of this LUDC affect land outside of the corporate boundaries of the City. On the effective date, these provisions are authorized by the *Intergovernmental Agreement Regarding Joint Land Use Planning between the City of Durango, Colorado and La Plata County, Colorado*, dated January 7, 2005 ("IGA"), as may be amended from time to time. If the IGA is terminated, this LUDC shall have no effect outside of the corporate boundaries of the City, except as may be provided by subsequent intergovernmental agreement, La Plata County Resolution, agreements with property owners, or statutory authorization.
- E. **Colorado Revised Statutes.** Supplemental authority for the provisions of this LUDC is provided by the Colorado Revised Statutes, provided that they are either preemptive of charter ordinances or not inconsistent with the provisions herein. The following provisions of the Colorado Revised Statutes may be relied upon as authority for certain provisions of this LUDC:
 1. Regulate zoning, planning, subdivision, and development of land and building by C.R.S. Title 31, Article 23;

2. Designate and administer areas and activities of state interest by C.R.S. §§ 24-65.1-101 to 108, 201 to 204, 301, 401 to 407, 501 to 502 and 34-1-301 *et seq.*, as amended;
 3. Regulate planned unit development by C.R.S. § 24-67-101 *et seq.*;
 4. Regulate certain activities on, and uses of land by C.R.S. § 29-20-101 *et seq.*, as amended;
 5. Regulate to avoid various types of pollution by virtue of C.R.S. § 25-7-112 (water pollution, radiation, noise);
 6. Regulate annexation of land by C.R.S. § 31-12-101 *et seq.*, as amended;
 7. Regulate medical marijuana uses by C.R.S. Title 12, Article 43.3;
 8. Recognize the vesting of property rights for site-specific development orders according to C.R.S. § 24-68-101, *et seq.*; and
 9. Regulate surveying practices according to C.R.S. § 38-51-101 *et seq.*
- F. **United States Code.** Some of the regulations in this LUDC are authorized or required by federal law, which may include programs that are delegated to the State of Colorado for administration. Such regulations may include, but shall not be limited to:
1. Flood damage prevention, pursuant to 42 U.S.C. § 4022; and
 2. Local implementation of the National Pollutant Discharge Elimination System ("NPDES"), pursuant to 33 U.S.C. § 1342.
- G. **Additional Authority; Limitations.** Should further authorizing legislation exist or be enacted, this LUDC is additionally deemed to be enacted or effective pursuant thereto, except:
1. This LUDC shall supersede inconsistent legislation if the City's home rule authority so provides; and
 2. This LUDC shall be superseded by such legislation only to the extent of any irreconcilable conflict if the City's home rule authority does not subordinate such legislation.

Effective on: 7/1/2014

Sec. 1-1-2-2 Applicability

- A. **Generally.** No land shall be developed except in accordance with the applicable provisions of this LUDC. All of the following are considered "development" that is subject to the applicable requirements of this LUDC:
1. The use of any building, structure, or land (including new uses, changes in use, expansions of existing uses, and material changes to the operational characteristics of existing uses).
 2. Construction, material alteration, repair, relocation, or demolition of infrastructure, structures (including but not limited to fences, retaining walls, signs, and towers), or buildings.
 3. Alterations of historic buildings and sites.
 4. Land clearing in anticipation of the construction of infrastructure, structures, or buildings for non-agricultural purposes.
 5. Any other disturbance of land, soil, vegetation, or waterways, including excavation, fill, or other alteration of land for construction or other purposes, but not including routine landscape maintenance.
 6. Any division of land for land development, for sale or for lease, whether by metes and bounds, subdivision, or other technique.
- B. **Applicability to Publicly Owned Property.** The provisions of this LUDC are applicable not only to private persons, agencies, corporations and organizations, but also to all public agencies, and organizations to the full extent that they may be enforceable under the United States Constitution and the Constitution and Statutes of the State of Colorado.
- C. **Relationship to Covenants, Conditions, and Restrictions.**

1. This LUDC does not abrogate private restrictions that affect the use, development, or maintenance of property. This LUDC will be enforced on property that is subject to private restrictions as provided in this Section.
2. The City has no duty to search for the existence of private restrictions on property. Except as specifically provided in Section [2-1-3-3, Residential, Transient Residential, and Overnight Accommodations Use / Zone Matrix](#), in the review of applications pursuant to this LUDC, the City will enforce only its own regulations.
3. The City will not interpret, enforce, or apply private restrictions unless it is a party to them.

Effective on: 7/1/2014

Sec. 1-1-2-3 Jurisdiction

- A. **Generally.** This LUDC shall apply within the corporate boundaries of the City of Durango, Colorado, as may be extended or contracted from time to time.
- B. **Extraterritorial Jurisdiction.** Some provisions of this LUDC may apply outside of the corporate boundaries of the City of Durango, Colorado, pursuant to intergovernmental agreement. See Section [1-1-2-1, Authority](#).

Effective on: 7/1/2014

ARTICLE 1-2 TRANSITION, INTERPRETATION, AND SEVERABILITY

Division 1-2-1 Transition

Sec. 1-2-1-1 Effect on Pending Applications

- A. **Generally.** An application for approval of a site specific development plan, as well as the approval, conditional approval, or denial of approval of such plan, shall be governed only by the duly adopted laws and regulations in effect at the time the complete application is submitted. See C.R.S. § 24-68-102.5, *Applications - Approval by Local Government*.
- B. **Immediate Public Health and Safety Exception.** The City may adopt a new or amended ordinance or regulation, when necessary, for the immediate preservation of public health and safety, and may enforce such ordinance or regulation in relation to applications pending at the time such ordinance or regulation is adopted. See C.R.S. § 24-68-102.5, *Applications - Approval by Local Government*.

Effective on: 7/1/2014

Sec. 1-2-1-2 Effect on Approvals and Permits that Pre-Date the Effective Date

- A. **Generally.** Approved development may be carried out within the scope of the development approval or permit, provided that the approval is valid and has not lapsed. Where development approvals or other approvals authorize the issuance of a permit, the permit must be requested within the period that the approval is valid. Work that is authorized by permits must be commenced during the period in which the permit is valid, and then diligently pursued to completion.
- B. **Duration of Development Approvals.**
 1. Development approvals and permits that are valid on the effective date are valid until the earlier of:
 - a. Their stated expiration date, which may be on the face of the permit or development approval, or within related documents such as development agreements or regulations in force on the date of the approval; or

b. The end of the applicable period that is set out in Table 1-2-1-2, *Expiration of Approvals and Permits that Pre-Date the Effective Date*.

2. Approvals and permits that do not have expiration dates according to this Section, and do not expire pursuant to Subsection E., below, do not have expiration dates (*e.g.*, rezonings and final plats).

Table 1-2-1-2 Expiration of Approvals and Permits that Pre-Date the Effective Date	
Approval or Permit Type	Duration of Approval (if not otherwise specified as provided in subsection B., above)
Permits and Approvals Related to Site Design ¹	
Site Plan	One year from date of approval
Preliminary Plan	One year from date of approval; except that filing of an application for final plat approval suspends the time period during the time the application is processed; and multiple final plats may be filed to cover the area of a preliminary plan, provided that the first final plat is filed within one year of approval of the preliminary plan, not more than one year elapses between the date of approval of each final plat and the date of application for the next final plat, and not more than five years elapse between the date of approval of the preliminary plan and the date of filing of the last final plat application.
Site Specific Development Plans	Three years from the date of approval
Permits and Approvals Related to Buildings and Structures	
Sign Permit	60 days from the date of issuance
Certificate of Design Compliance	One year from date of approval
Alternative Compliance	One year from date of approval
Alterations Certificate	One year from date of approval
Demolition Permit in Historic Preservation District	One year from date of approval
Variance	One year from date of approval
Permits and Approvals Related to Land Use	
Change of Use Permit	6 months from date of approval
Special Use Permit	One year from date of approval
Conditional Use Permit	One year from date of approval
TABLE NOTE: ¹ Expiration of these permits also causes expiration of related construction permits, including but not limited to, stormwater quality permits and excavation permits.	

C. **Scope of Approvals.** This Section shall not be interpreted to confer rights upon an applicant that are not set out within the scope of a development approval or permit. For example, if building design or landscaping standards are adopted after a plat is approved, but before any other applications are filed, then they may be applied to the plat because they are outside of the scope of plat approval.

D. **Conditions of Prior Approvals or Permits.** All conditions of development approvals or permits that were granted or issued prior to the effective date remain in force according to their own terms, regardless of the standards or requirements of this LUDC. Conditions of approval may be modified or eliminated pursuant to Section 6-3-9-1, *Modification of Approvals*, or upon periodic review if the condition of approval required periodic review.

E. **Continuation, Termination, and Extension of Planned Developments that Pre-Date the Effective Date.**

1. *Continuation.*

- The *Three Springs Planned Development Codes and Standards*, Ordinance O-2008-19, prepared and published by GRVP, LLC, as may be amended from time to time, are continued. See Section 1-2-1-3, *Three Springs Code and Development Agreement*.
- The provisions of all other adopted planned development ordinances that relate to the use of land and the location of common open space are continued.
- Other provisions of adopted planned development ordinances are continued, but may be modified or repealed in the manner set out in Section 6-3-10-7, *Modification of Planned Development Approvals*.

2. Termination and Extension.

- a. Planned development ordinances adopted prior to the effective date shall terminate upon:
 1. Any date that is included in a development agreement for the planned development; or
 2. Provisions related to termination that are included in the ordinance approving the planned development; or
 3. If there are no dates specified in a development agreement or adopting ordinance, and if construction is not commenced and diligently pursued, according to the process set out in Section 6-3-10-6, *Development Schedules*.
- b. Planned development ordinances may be extended:
 1. According to their own terms or the terms of a related development agreement; or
 2. If there are no terms specified, upon amendment of the planned development ordinance or approval or adoption of a development agreement by the City Council upon good cause shown for the extension. The City Council may impose additional conditions to the adoption ordinance or development agreement.

F. **Effect of Termination of Approval.** Approvals that terminate pursuant to this Section become void on the date of termination, and no further development approvals or permits may be issued in reliance upon them. No application for an extension or modification of an approval or permit will be accepted after termination of the approval or permit for which extension or modification is sought.

Effective on: 7/1/2014

Sec. 1-2-1-3 Three Springs Code and Development Agreement

- A. **Generally.** Pursuant to the approval for the Three Springs Planned Development ("Three Springs"), development and redevelopment within Three Springs is regulated by the *Three Springs Planned Development Codes and Standards*, Ordinance O-2008-19 Amendment, and the *Three Springs Development Agreement* prepared and published by GRVP, LLC, as may be amended from time to time ("Three Springs Code and Development Agreement").
- B. **Resolution of Conflicting Provisions.** Conflicts between the Three Springs Code and Development Agreement and this LUDC shall be resolved in favor of the Three Springs Code and Development Agreement, unless the PD is amended to confirm the LUDC or the LUDC provisions implement state or federal law and the Three Springs Code and Development Agreement does not.
- C. **Official Copy of Three Springs Code.** One official copy of the Three Springs Code and Development Agreement is on file in the office of the City Clerk and may be inspected during regular business hours.
- D. **Certification of Design Compliance.** The Three Springs Code requires certification of design compliance by the Three Springs Design Review Committee ("DRC") prior to the issuance of building permits for construction within Three Springs.

Effective on: 7/1/2014

Sec. 1-2-1-4 Effect on Development, Annexation, and Improvement Agreements

This LUDC does not affect existing development agreements, improvement agreements, or annexation agreements, except as may be provided therein or by applicable state or federal law.

Effective on: 7/1/2014

Sec. 1-2-1-5 Effect on Existing Violations

- A. **Generally.** Any violation of the previous versions of the LUDC or sections of the Durango Municipal Code that were repealed and replaced upon adoption of this LUDC shall be treated as follows:
1. If a violation occurred prior to the effective date and continued past the effective date, then the City may pursue remedies for each day of violation, based on the LUDC or municipal code sections that were in effect on each day that the violation occurred.
 2. If a violation occurred prior to the effective date, but the same activity is no longer a violation after the effective date, then the City may pursue remedies for each day of the violation, based on the LUDC or municipal code sections that were in effect on each day prior to the effective date during which the violation occurred.
- B. **Fines and Penalties.** Payment of fines shall be required for any civil penalty assessed prior to the effective date (under the previous versions of the LUDC or Durango Municipal Code), even if the original violation is no longer considered a violation under this LUDC.

Effective on: 7/1/2014

Division 1-2-2 Interpretation and Severability

Sec. 1-2-2-1 Interpretation

- A. **Generally.** As this LUDC affects constitutionally protected rights, it has been written with an understanding of, and subject to, these rights, which are articulated in the Constitutions of the United States and the State of Colorado and interpreted by federal and state courts with jurisdiction in and over the City of Durango.
- B. **Relationship to Policy and Land Use Plans.** The Durango City Charter provides that, "The comprehensive plan shall serve as a guide for all future council action concerning land use and development regulations." It is the City Council's intent that this LUDC provide for implementation over time of the policies that are set out in the comprehensive plan, as well as any specific area, transportation, or facility plans that may be adopted prior or subsequent to the adoption of this LUDC. However, neither this LUDC nor any amendments thereto may be challenged on the basis of any alleged inconsistency or nonconformity with any planning document.
- C. **Permits Issued in Conflict with LUDC.** Any permit issued in conflict with the provisions of this LUDC shall be null and void and shall not be construed as waiving any provision of this LUDC, unless such waiver is expressly authorized by variance or other comparable procedure set out herein. No oversight or dereliction of any office or employee of the City shall legalize, authorize, or excuse any violation of any provision of this LUDC. No legal, vested, or equitable rights shall be acquired under any invalid zoning or building permit, certificate of occupancy, or license.
- D. **Basic Requirements.** In their interpretation and application, the provisions of this LUDC shall be regarded as the basic requirements for the protection of public health, safety, comfort, convenience, prosperity, and welfare. This LUDC shall be liberally interpreted in order to further its underlying purposes.
- E. **Construction with Other Laws.** Whenever any provision of this LUDC or any provision of any other law, rule, contract, resolution, ordinance, or regulation of the City, County, state, or federal government contains certain standards covering the same subject matter, the interpretation that gives effect to all of the applicable laws controls. Generally, that means that the more restrictive requirements or higher standards control the decision.
- F. **Signs; Substitution of Noncommercial Speech for Commercial Speech.** Notwithstanding anything contained in this LUDC to the contrary, any sign erected pursuant to the provisions of this LUDC or otherwise lawfully existing with a commercial message may, at the option of the owner, contain a noncommercial message in lieu of a commercial message. The noncommercial message may occupy the entire sign face or any portion thereof. The sign face may be changed from commercial to noncommercial messages, or from one noncommercial message to another, as frequently as desired by the owner of the sign, provided that:
1. The sign is not a prohibited sign or sign-type;

2. The frequency of message changes does not exceed the maximum frequency established by this LUDC for electronic message centers; and (insert section #?)
3. The size, height, setback, and other dimensional criteria contained in this LUDC have been satisfied, or the sign structure is legally nonconforming.

Effective on: 7/1/2014

Sec. 1-2-2-2 Severability

- A. **Generally.** It is the legislative intent of the City Council that provisions of this LUDC and subsequent amendments (unless otherwise set out in the adopting ordinance for said amendments) shall be severable in accordance with the provisions set out in this Section.
- B. **Severability of LUDC Provisions, Except Signs.** If any Chapter, Article, Division, Section, subsection, paragraph, clause, provision, or portion of this LUDC is held unconstitutional or invalid by a court of competent jurisdiction, the remainder of this LUDC shall not be affected, and shall continue in full force and effect unless and until the City Council acts to modify the LUDC or part thereof. If any application of this LUDC to a particular building, use, structure, improvement, land, or water is adjudicated as unconstitutional or invalid by a court of competent jurisdiction, such judgment shall not be applicable to any other building, use, structure, improvement, land, or water that is not specifically included in said judgment.
- C. **Severability of LUDC Provisions Regarding Signs.** With respect to [Article 3-6, Signs](#), the following severability provisions shall apply instead of those set out in Subsection B., above:
 1. *Severability Generally.* If any Division, Section, Subsection, paragraph, clause, provision, or portion of [Article 3-6, Signs](#), or any other provision of this LUDC that is related to signage, is declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, then the declaration of such unconstitutionality shall not affect any other Division, Section, Subsection, paragraph, clause, provision, or portion of [Article 3-6, Signs](#), or any other part of this LUDC.
 2. *Severability Where Less Speech Results.* Without diminishing or limiting in any way the declaration of intent with respect to severability that are set forth in Subsection C.1., above, or elsewhere in this Section, this LUDC, or any adopting ordinance or amendment, if any Division, Section, Subsection, paragraph, clause, provision, or portion of [Article 3-6, Signs](#), or any other provision of this LUDC that is related to signage, is declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, then the declaration of such unconstitutionality shall not affect any other Article, Division, Section, Subsection, paragraph, clause, provision, or portion thereof, even if such severability would result in a situation where there would be less speech, whether by subjecting previously exempt signs to permitting or otherwise.
 3. *Severability of Provisions Pertaining to Prohibited Signs and Sign Elements.* It is the intent of the City Council to ensure that the sign types and sign elements that may be constitutionally prohibited by this LUDC continue to be prohibited. Accordingly, without diminishing or limiting in any way the declarations of intent with respect to severability that are set forth in Subsections C.1. and C.2., above, if any Division, Section, Subsection, paragraph, clause, provision, or portion of [Article 3-6, Signs](#), or any other provision of this LUDC that is related to signage, is declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, the declaration of such unconstitutionality shall not affect any other Article, Division, Section, Subsection, paragraph, clause, provision, or portion of [Article 3-6, Signs](#), that pertains to prohibited signs or sign elements.
 4. *Severability of Provisions if Adjudicated Stricken Due to a Content-Basis.* It is the intent of the City Council to regulate signage in a manner that implements the purposes of [Article 3-6, Signs](#), as expressed therein. The City finds that the purposes stated in [Article 3-6, Signs](#), are legitimate, substantial, and compelling public interests, that the regulation of signage provided by [Article 3-6, Signs](#), is unrelated to the suppression of free expression, and that the incidental restrictions on expression that may occur as a result of these regulations is no more than is essential to the furtherance of the public interests. However, if a court of competent jurisdiction finds any regulation therein to be based upon content and, further, declares such regulation unconstitutional, then it is

the intent of the City Council that only that portion of the provision that is found to unconstitutionally relate to content be severed from this LUDC, and if it is not possible for the court to strike only the portion of the provision that is found to relate to content, then it is the intent of the City Council that all signs that would be subject to the stricken provision will instead be subject to the next surviving provision for a sign of comparable geometry and character that is more restrictive than the stricken provision in terms of sign area, and if the sign area is the same, sign height.

Effective on: 7/1/2014