

CLARKSTON TOWN

ORDINANCE NO. 20_____ - _____

**AN ORDINANCE AMENDING THE TOWN'S SUBDIVISION
ORDINANCE BY ADDING SECTION _____ PROVIDING FOR THE
RECORDING OF NOTICE ON TITLE OF ANY PARCEL OF PROPERTY
THAT HAS BEEN ILLEGALLY SUBDIVIDED.**

WHEREAS, the **Clarkston** Town Council (the "Council") has determined that it is in the best interest of its citizens and the public in general to protect potential buyers against the unknowing purchase of an illegally subdivided parcel;

WHEREAS, the Council has determined that recording a public notice on title to any illegally subdivided parcel will provide such notice to innocent buyers, advances one or more of the purposes of the Town's Subdivision Ordinance and the Town Land Management and Development Code, and is consistent with the Town's General Plan; and

WHEREAS, the Town Planning Commission has reviewed this Ordinance and recommended its adoption by the Council.

NOW, THEREFORE, BE IT ORDAINED, by the **Clarkston** Town Council, Cache County, State of Utah, as follows:

1. The following Section _____ is hereby adopted and added to the Town Subdivision Ordinance as follows:

NOTICE OF NONCOMPLIANCE

A. Upon inspection and discovery that any provision of the Town's Subdivision Code has been or is being violated, the Town may provide written Notice of Violation to the owner of the property that is the subject of the violation and to any other party who may be responsible for the violation.

B. The written Notice of Violation shall:

1. Indicate the nature of the violation;
2. Identify the action necessary to correct the violation;
3. Give the property owner **thirty (30)** days from the date of receipt of the Notice to correct the violation;
4. State the action the Town intends to take if the violation is not corrected within the **thirty (30)** day period; and

5. State that the property owner may request a hearing with the PLANNING COMMISSION if the property owner disagrees with the determinations set forth in the Notice of Violation.

C. The Notice of Violation shall be served upon the property owner and/or the violator by personal delivery, by certified mail, return receipt required, to the address listed on the County Assessor's records for the property.

D. Within **thirty (30)** days of the day on which the Notice of Violation is served on the property owner, the property owner may request a hearing with the PLANNING COMMISSION to present facts and argument as to why the property owner is entitled to relief from the Notice of Violation. The property owner shall file the request for a hearing in writing with the Town Clerk. The written request for a hearing shall set forth the property owner's position as to why the property owner is entitled to relief. The Town clerk shall notify the PLANNING COMMISSION of the request for a hearing and the request shall be placed on the agenda for the next regularly scheduled meeting of the PLANNING COMMISSION, but in no event later than thirty (30) days from the date the Town Clerk receives the request for a hearing. The PLANNING COMMISSION shall review the Notice of Violation, the written request for a hearing, and any other information that the property owner or any other interested party may present, and make a determination as to whether the violation set forth in the Notice of Violation has taken place or exists. The Town shall have the burden of proving by a preponderance of the evidence the violation took place or exists.

E. If the property owner has not requested a hearing with the PLANNING COMMISSION within the **thirty (30)** day period, or if after a hearing on the matter the PLANNING COMMISSION determines that the violation set forth in the Notice of Violation has taken place, the PLANNING COMMISSION or any other person designated by the Town may record a Notice of Noncompliance on title to the property that is the subject of the Notice of Violation. The Notice of Noncompliance shall generally explain the nature of the violation, indicate that no permits or licenses, including but not limited to, a building permit, may be issued for any structure located on the subject property, and meet all other requirements for the recording of documents in the Cache County Recorder's Office.

F. If the Town subsequently determines that the violation of the Town's Subdivision Code for which a Notice of Noncompliance has been recorded has been cured or that the property which is the subject of the Notice of Noncompliance is otherwise no longer in violation, the PLANNING COMMISSION, TOWN COUNCIL or other person designated by the Town shall record a release of the Notice of Noncompliance on title to the subject property.

G. Notwithstanding anything to the contrary in any ordinance or code of the Town, until such time as the violation for which a Notice of Noncompliance issued under this Section has been cured or otherwise resolved, the Town may

withhold or deny the issuance of any permits, licenses, or connections of any kind including but not limited to, a building permit, water connection, or other similar permit or connection, for the property in violation or any structure thereon.

2. To the extent of any conflict between this Ordinance and any other ordinance(s) or regulation(s) of **Clarkston** Town, the provisions of this Ordinance shall be controlling.

3. The sections, paragraphs, sentences, clauses, and phrases of this Ordinance are severable. If any such section, paragraph, sentence, clause, or phrase shall be declared invalid or unconstitutional by the valid judgment or decree of a Court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any of the remaining sections, paragraphs, sentences, clauses, or phrases of this Ordinance.

4. This ordinance shall become effective immediately upon publication or posting as set forth by State Law.

ADOPTED AND PASSED, by the **CLARKSTON** TOWN COUNCIL this _____ day of _____, 20_____.

CLARKSTON TOWN

, Mayor

ATTEST:

, Town Clerk

July 18, 2024

Via Certified Mail

Re: LETTER OF NONCOMPLIANCE

Dear Property Owner:

You are receiving this Notice because public records held at the Cache County Recorder's Office indicate that you are the owner of record of the parcel(s) of real property located in Cache County Utah and described more particularly below:

SEE EXHIBIT A

It has come to the Town's attention that the above-described parcel(s) of real property was created or adjusted in violation of the Town's Subdivision Ordinance and Part 6 of the Utah Municipal Land Use, Development, and Management Act (Utah Code Ann. § 10-9a-601 *et seq.*). Specifically, this parcel(s) was created from the division and/or subdivision of a larger parcel in violation of the requirements established under the foregoing provisions.

This Letter is not to accuse anyone of committing a crime, but to inform owners that the above-described parcel(s) is a noncompliant division of land. The fact that a deed was recorded for the above-named property in the Cache County Recorder's Office does not indicate that the subdivision was approved by the Town or Cache County. The County Recorder's Office is required by law to record title instruments, and it does not have the responsibility or function of verifying that transferred properties are compliant with State Law or Town Ordinance.

As you may or may not be aware, with a few minor exceptions, both State Law and Town Ordinance require that the division or subdivision of any parcel of real property must be compliant with the Town's Subdivision Ordinance and State Law. Any division or subdivision of a parcel in violation of State Law or Town Ordinance may be punishable as a crime and may subject the property owner to other enforcement remedies including, but not limited to, the commencement of legal action by the Town.

Furthermore, any further division, subdivision, sale, exchange, or transfer of the improperly created parcel is also a violation of State Law and Town Ordinance and punishable as a separate criminal offense. Additionally, no permits or licenses of any kind, including building permits, may be issued for the use of any building or land that is in violation of the Town Subdivision Ordinance or State Law.

Thus, illegally subdividing parcels of real property not only affects the original subdividing party, but also the party to whom the subdivided parcel is subsequently transferred because that parcel cannot be sold or transferred without further violating State Law and Town Ordinance. Moreover, recipients of illegally subdivided parcels of real property may be entitled to legal recourse against the parties from whom they received the property.

Please be advised that after ten (10) business days, the attached “Notice of Noncompliance” will be recorded in the Cache County Recorder’s Office. This notice does not create a lien, notice of interest, or encumbrance on the above-described property, but works to provide notice to bona fide purchasers of the limitations of noncompliant parcels of real property. In the event you feel that this determination of noncompliance is in error or that your parcel was created pursuant to a valid subdivision in accordance with State Law and/or Town Ordinance, we recommend that you obtain additional information supporting that position and contact the Town to discuss a resolution of this matter.

Sincerely,

CLARKSTON TOWN

Planning Commission

EXHIBIT A

[Insert legal description of the property]

RETURN TO:
CLARKSTON TOWN
PO BOX #####
CLARKSTON, UTAH 84305

NOTICE OF NONCOMPLIANCE

NOTICE IS HEREBY GIVEN, that the parcel(s) of real property described below (hereinafter the "Parcel") is currently not in compliance with the Clarkston Town Subdivision Ordinance, the Clarkston Town Land Management and Development Code, and/or the Utah Municipal Land Use, Development and Management Act. Specifically, the Parcel is a division and/or subdivision of a larger parcel and was not created in compliance with the requirements of the foregoing laws. Therefore, Clarkston Town cannot verify that this property has services available or is accessible without trespass, and Clarkston Town cannot issue any permit or license, including but not limited to, a building permit, for a structure on the property.

The Parcel(s) is located within the State of Utah, Cache County, and more specifically described as follows:

See Exhibit A, attached and incorporated by reference.

Please be advised that any further division, subdivision, sell, exchange, or transfer of the Parcel may be a violation of Utah State code and Clarkston Town ordinances and punishable as a criminal offense.

In the event you have any questions or feel this Notice was recorded in error, please feel free to contact Clarkston Town Office.

DATED this ____ day of _____, 20____.

Clarkston Town

STATE OF UTAH)
 : ss.
County of Cache)

The foregoing instrument was acknowledged before me this ____ day of _____,
20____ by _____.

NOTARY PUBLIC

EXHIBIT A

[place property description here]