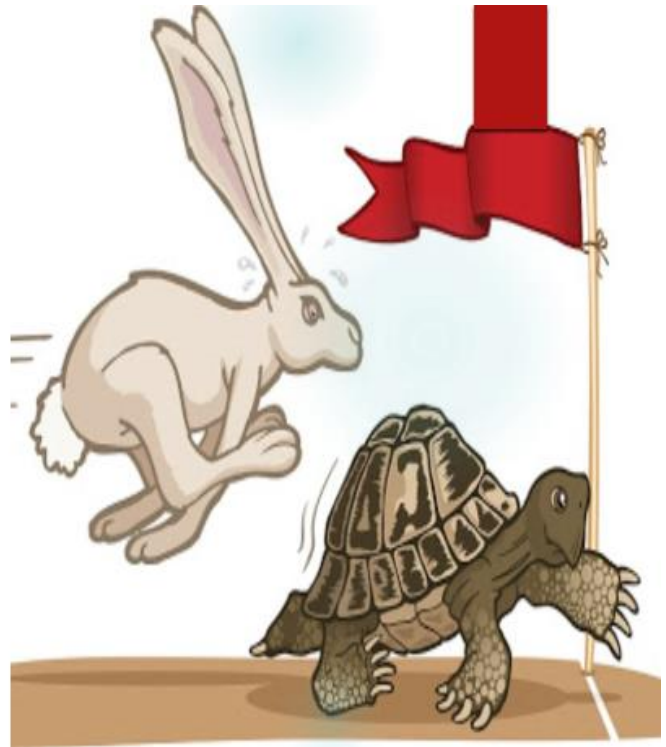


April 14, 2020

2020 Legislative Update



ULCT UTAH LEAGUE OF
CITIES AND TOWNS



Summary Notes to
Legislative Land Use Update Presentation
April 14, 2020

Land Use Administration

HB 388 – Land Use Development and Management Revisions –Title 10 and 17

- Land Use Task Force bill, though much modified at last minute
- Modifies definitions of municipal utility easement
- Defines “subdivision amendment”
- Makes more explicit powers and duties of planning commission
 - Clearly states requirement to hold public hearings on legislative items
 - Clearly states legislative body options to PC recommendation
 - Failure of PC to make “timely” recommendation may be considered a negative recommendation
- Land use applications in unincorporated county have right to move forward regardless of municipal annexation or incorporation. (d) A subsequent incorporation of a municipality or a petition that proposes the incorporation of a municipality does not affect a land use application approved by a county in accordance with Section 17-27a-508.)
- States that failure to record an approved plat within time specified by ordinance is voidable by land use authority only, and transfer of land under a void plat is also voidable by the land use authority.
- Makes language consistent with current LUDMA provisions elsewhere on process for approval of divisions of up to 10 lots without requiring a plat.
- Makes all changes to previously recorded plats “subdivision amendments” including plat vacating, provides for such amendments to plat only the property affected, not redo the entire plat.
- Appeals to land use decisions may be taken only by the applicant, a board or officer of the governmental entity, or an adversely affect party (AAP).
 - AAP is defined as someone who owns real property adjoining the applicant’s property, or someone who will “suffer damage different in kind than, or an injury distinct from, that of the general community as a result of the land use decision.”

Action: Review and update your subdivision codes and your appeal authority provisions.

HB374 – Building Regulation Amendments -Title 10, Title 15A, Title 17 and Title 631

- Requires the Utah League to submit a report by October 2020 that shows average time cities take to complete plan reviews (as defined in the bill), longest time it took, whether a city required resubmittal of plans for non-substantive plan changes, and any reasons for delay in completing plan reviews such as developer delay or COVID 19.
- Also report on building inspections, average days from request to inspection completion, longest time to complete requested inspection, reasons for delay, and number of hours independent inspectors were used.
- Includes in the current list of strategies to be considered for the counties and 82 cities required to have moderate income housing plans a strategy to reduce “residential

building design elements” (defined in the bill) for single family homes Water heater exception to building energy code included.

Action: ULCT will be contacting all their members with a template for reporting requirements by end of April if not sooner.

HB273 – Property Rights Ombudsman Amendments - Title 13 -Property Rights Ombudsman

- If a party receives an advisory opinion from the Office of the Property Rights Ombudsman (PRO), and further litigates the same land use dispute in court, the prevailing party may collect a civil penalty of \$250/day.
 - Penalty period to be 30 days after advisory opinion was delivered, or the day on which the court action was filed, whichever is later
 - Court may still award reasonable attorney fees in addition to the penalty
- If the court rules on the same facts and circumstances as the OPR decision, then penalties can apply.
- The penalty is awarded only if a court finds that the opposing party **knowingly and intentionally** violated the law. This is a very high legal standard of review. The penalty begins on the later of 30 days after the PRO advisory opinion is delivered or the day that the action is filed in court and ends when the court enters a final judgment.
- The court may only impose the civil penalty against or in favor of the land use applicant or government entity and not a third party.

Action: Land use Authorities and staff should carefully consider any land use decision subject to this legislation and ensure that municipal action is in full compliance with the law.

HB198 – Eminent Domain Limitations – Judicial Code Title 78

- Prohibits the use of eminent domain to acquire land for a public park from a “century farm” in a first class county (SL County).
- Defines “century farm” as property that is assessed as a farm producing agricultural products, and has been held in the same family for at least 100 years.
- Consolidates the language on prohibition of use of eminent domain for trails (nothing new).

Action: A municipality in a county of the first class should amend its ordinances or policies on eminent domain to reflect the century farm property protection in this legislation.

HB226 – Storm Water Permitting Amendments –Title 19 Environmental Quality Code

- Provides a process for “low impact development” for reduced storm water requirements.
- Defines “low impact development” as structural or natural engineered systems located close to the source or storm water that use or mimic natural processes to encourage infiltration, evapotranspiration or reuse of storm water.
- The big change here was the appeal process that is setup like the Geological Hazards appeal in LUDMA :

(4) (a) An applicant who appeals a permittee's determination regarding post-construction retention requirements under the permittee's storm water permit may request the permittee to refer the appeal to independent review for purposes of determining the technical aspects of the appeal, including:

(i) the required size of any low impact development system; (ii) the calculations of reductions in storm water runoff rates or storm water runoff volumes for flood control due to the use of low impact development; and (iii) the feasibility of constructing low impact development practices required by the permittee.

(b) If an applicant makes a request under Subsection (4)(a):

(i) the permittee shall:

(A) select an engineer or engineering firm from the list described in Subsection (3);

and

(B) pay one-half of the cost of the independent review.

(ii) An engineer or engineering firm selected by the permittee under Subsection

(4)(b)(i) may not be:

(A) associated with the application that is the subject of the appeal; or

(B) employed by the permittee.

(iii) The applicant shall pay:

(A) one-half of the cost of the independent review; and

(B) the municipality's published appeal fee.

Action: Consult with the Building Department. Update your appeal section and check your appeal fees. May want to include this in your ordinances.

HB297– Yurt Amendments Title 15A State Construction and Fire Codes Act- Counties Only
(Municipalities if they have watershed area)

This bill exempts a remote yurt from the State Construction Code, and the State Fire Code (with certain requirements), water quality provisions (with certain requirements), but allows counties to make certain remote yurts subject to some regulations. A remote yurt:

- Is smaller than 710 square feet;
 - Is located in an unincorporated county;
 - Is located in an area that is not zoned for residential, commercial, industrial, or agricultural use;
 - Does not have plumbing or electricity;
 - Is set back at least 300 feet from a body of water; and
 - Is registered with the local health department.
- Counties can require, by ordinance, compliance with State Construction Code.

Action: Have your Building Inspectors review the new provisions and make any amendments accordingly.

HB202 – Local Government Nuisance Ordinance Reform – Title 10-3- Municipal Code

Relates to an individual's action that violates local code regarding pets or the use of residence.

- Cannot impose criminal penalty (infractions only) on these actions unless:
 - Action meets state code definition of nuisance, and threatens health, safety or welfare; or
 - Three fines have been imposed for same violation at least 3 times in previous 12 months
 - Citations for infractions must be at least 14 days apart
- Does not apply to building or fire code violations

Action: Have your Attorney review your nuisance ordinance.

HB306 – Planning Commission Amendments – Counties Only – Title 17

This bill allows a 1st or 2nd class county that includes more than one planning advisory area each with a separate planning commission to dissolve the planning commissions and establish a countywide planning commission that has jurisdiction over each planning advisory area within the county.

Action: This bill requires no municipal action. 1st or 2nd class counties with multiple planning commissions may consider using this bill to create a countywide planning commission.

Housing

SB39 – Affordable Housing Amendments Title 17, Title 35a, Title 59

- Allocated \$10M to the Olene Walker Housing Loan fund for the creation and preservation of affordable housing. \$5M appropriation to be used as private activity bond gap financing, and \$5M to be utilized as a public private partnership with the Utah Housing Preservation Fund (Clark and Christine Ivory Foundation, Intermountain Healthcare, Zions Bank, and Utah Non-Profit Housing Corporation).
- Allows for the transfer of allocated Low-Income Housing Tax Credits (LIHTC) from a corporation to an individual or vice versa.
- Provides an option for communities to contribute their housing set-aside towards the acquisition, construction, or rehabilitation of targeted housing outside of the community if the housing is located along or near a Major Transit Investment Corridor per an Interlocal Agreement.

Action: None required. Information Only.

SB122 – Housing Loss Mitigation Amendments – Title 35A, 72

- This bill requires UDOT to provide a report to the Economic Development and Workforce Services Interim Committee and the Commission on Housing Affordability

regarding the number of moderate-income housing units lost in the previous year due to action by UDOT.

- The Commission on Housing Affordability then includes recommendations on how to act to address the loss of moderate-income housing units in consultation with affected political subdivisions.
- Recommendations shall include how the state and other stakeholders can support and encourage the construction or rehabilitation of replacement units.

Action: None required. Information only.

Annexation

HB305 – Urban Development Amendments- Counties Only - Title 10 Classification, Boundaries, Consolidation, and Dissolution of Municipalities

- This bill prohibits a county from approving an “expansion area urban development” unless the county notifies and gives a city or town the opportunity to consent proposed development.
- In 2nd-6th class counties, an “expansion area urban development” means an urban development, as defined in 10-2-401, within the city or town’s expansion area. In a first class county, “expansion area urban development” means urban development within a city or town’s expansion area that consists of 50 or more acres, requires the county to change the zoning designation, and does not include commercial or industrial development that is located within a mining protection area. (Kennecott provision)
- The development proposal may then proceed if the city or town consents in writing; objects within 90 days of receiving the notice and the county responds in writing; or the municipality takes no action within 90 days.

Action: This bill requires no municipal action. Counties should review a development proposal to determine if meets the definition of “expansion area urban development” and, if applicable, provide the required notice.

HB359 – Municipal Annexation Revisions – Title 10 -Classification, Boundaries, Consolidation, and Dissolution of Municipalities

- Applies to all counties except first class counties.
- Allows for annexation of non-contiguous land provided that:
 - The land is in the municipality’s declared expansion area;
 - The county governing body consents;
 - If another municipality also has the area in its expansion area, it consents to the annexation; and
 - The annexation is for the purpose of providing municipal services
- Bill also includes provision to allow a municipality to annex certain properties without an annexation petition if it meets a long list of very specific requirements.

Action: Review and update your local annexation regulations.

HB393 – Municipal Annexation Amendments – Title 10 Classification, Boundaries, Consolidation, and Dissolution of Municipalities

- This bill prohibits a party from including in a petition to annex in any county an area that includes some or all of an area proposed to be incorporated in a request for a feasibility study if the feasibility study request is filed before the annexation petition and the feasibility study request is still pending.
- If an unincorporated island or peninsula is within the expansion area of more than one municipality, the bill also allows a municipality to annex without a petition if both municipalities agree.
- The bill also changes hearing requirements for an annexation without a petition in a second class county.

Action: A municipality should review an annexation petition to ensure it does not include an area also identified in an incorporation feasibility study. A municipality should review a proposed annexation of an area that is located in another municipality's annexation expansion area.

Other Topics

SB150 – Transportation Governance and Funding Amendments – Titles 10, 13, 17, 41, 59, 72

- Eliminates the cap on UTA TOD sites now allowing an opportunity for more municipalities to partner with UTA in future TOD developments
- Ties the moderate-income housing element of general plans and new station area planning requirements to TOD sites (for 82 cities only).
- Allows Utah's State Transportation Commission to give priority consideration to projects that are part of a transit-oriented/supportive development and/or a Transportation Reinvestment Zone.
- No later than 6/1/21, UDOT will identify how it will expand the RUC program to enroll all registered vehicles in the state no later than 12/31/31 and submit an annual report on the program's revenues, participation rate, and department costs from preceding and current fiscal years.
- Modifies provisions related to local option transportation sales taxes; class B&C road funds; transportation network companies; and tollways.

Action: Review local option sales tax provisions. Consider planning objectives and if a transit-oriented/supportive development can be a benefit to your locality.

SB95 – Economic Development Amendments Titles 53b, 59, and 63

- Creates the Rural County Grant Program within the Office of Rural Development to incentivize rural economic development.
- Requires those rural counties who wish to participate to create a County Economic Development Advisory Board.
- Creates the Rural Speculative Industrial Building Program within GOED to encourage the construction of rural speculative industrial buildings by private developers.

- Moves the Recycling Market Development Zone Act to the Department of Environmental Quality and repeals USTAR and returns monies to the general fund.

Action: Each city in a county of the third, fourth, fifth or sixth class should carefully review SB 95 <https://le.utah.gov/~2020/bills/static/SB0095.html>.

It requires each rural county that seeks to participate in the Rural County Grant Program. To create a Community Economic Development Advisory Board (CED Board) composed of at least the following members appointed by the county legislative body: (i) a county representative; (ii) a representative of a municipality in the county; (iii) a workforce development representative.

SB115 – Bonding Amendments Titles 11, 63 and 72

- Modifies provisions related to state and local bond obligations. Technical modifications related to MIDA projects.
- As resources allow, UDOT shall study transportation connectivity in the southwest valley of Salt Lake County, including the feasibility of connecting major east-west corridors to U-111.
- Allows the State Infrastructure Bank (SIB), through UDOT, to fund construction (rather than just improvement) of parking structures. SIB funds can now also be used for projects that are part of a local government “economic initiative.”

Action: None required. Information only.

HB347 – Inland Port Modifications – Title 10, Title 11, Title 54 and Title 63

- Authorizes the Utah Inland Port Authority to use funds to encourage, incentivize, or require development with reduced environmental impact and to develop and implement zero-emissions logistics.
- Modifies the responsibilities of the executive director including the power to adjust the boundary of the Authority.
- Adds the Mayors of Salt Lake City and Magna Metro Township to the Inland Port Authority board.
- Eliminates language related to an agreement for a municipality to provide municipal services.
- Modifies provisions relating to the Authority’s receipt and use of property tax differential. The Authority may not use property tax differential for a landowner’s development in a project area unless the minimum mitigation and environmental standards are followed with respect to the landowner’s development.
- Repeals provisions relating to appeals, with a separate inland port appeal authority, different from the appeal authority process specified for all other entities in LUDMA.

Action: Board changes apply to SLC and Magna. A municipality within the Port Authority boundaries should review the legislation for changes to land use authority, use of revenues, and municipal services.

SB112 – Inland Port Amendments -Title 11

- Requires the Utah Inland Port Authority to establish a Community Enhancement program to address the impacts of development and inland port uses on adjacent communities and to use Authority money to support the program. The Authority is required to report on the program to legislative committees.

Action: None required. Information only.

SB158 – Urban Renewal Project Area Amendments – Title 17C

- Allows for extension of time period of use of project area funds for a project areas that includes an inactive industrial site (Geneva).

Action: None required. Information only.

SB169 – Transportation Utility Fee Amendments – Title 11

- In definition of transportation utility fee, eliminates the words “or tax.”

Action: A municipality that levies a tax for a transportation utility fee should review this legislation and ongoing litigation.

SCR6 – Concurrent Resolution for Study of Local Option Sales Tax

- Requests that UAC and ULCT provide the Legislature with information regarding the impact of e-commerce and the point of sale associated with the various local option sales and use tax rates and, where applicable, possible changes to the distribution formulas.

Action: ULCT and UAC will be asking members for information this summer.

Bills that Did Not Pass

- HB133 – Trail Improvement Amendments
- HB236 – Safe School Route Evaluations
- HB261 – Eminent Domain Revisions
- HB299 – Opportunity Zone Enhancements
- HB480 – Water Source Protection Zone Amendments
- SB92 – Statewide Comprehensive Rail Plan
- SB106 – Agricultural Amendments
- SB108 – State Infrastructure Bank Amendments
- SB163 – Community Reinvestment Agency Amendments
- SB176 – Sign Relocating Amendments
- SB181 – Local Referenda Amendments