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# Familiar but Forbidden

*Office of the Property Rights Ombudsman  
2025 Utah APA*

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## Our Expertise:

### **1. EMINENT DOMAIN**

Takings, regulatory takings, inverse condemnation

### **2. LAND USE REGULATIONS**

Impact fees, land use applications, subdivision plats, building permits, certificates of occupancy, variances, impact fees, vested rights, legal nonconforming use.

# How we can help:

## EMINENT DOMAIN

Mediation

Can order second appraisal

Pamphlet required to hand out

Education on rights

Education on responsibilities

Explain the process

Website resources

Training

# How we can help:

## LAND USE REGULATIONS

Advisory Opinions

Answering Questions

Mediation

Education on rights and responsibilities

Website, training, seminars, conferences

Statewide Land Use Training Director

Land Use Training Funds

# Familiar but Forbidden



- Avoiding lawsuits can be fun!
- Knowing how to do your job well is rewarding.

# Property Rights Protected by Utah Constitution

## **Inherent Right to Property, Article I, Section 1**

*"All persons have the inherent and inalienable right...to acquire, possess and protect property."*

## **Due Process of Law, Article I, Section 7**

*"No person shall be deprived of...property, without due process of law."*

## **Takings Clause, Article I, Section 22**

*"Private property shall not be taken or damaged for public use without just compensation."*

## **Uniform Operation of Laws, Article I, Section 24**

*"All laws of a general nature shall have uniform operation."*

## **Balanced with Police Power**

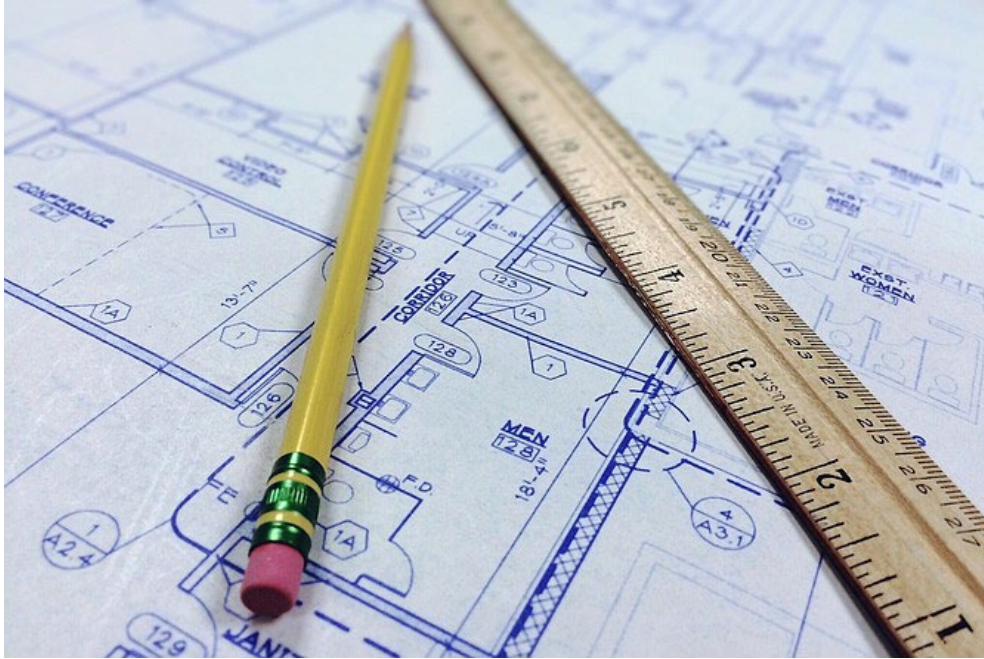
Property rights exist in balance with the government's inherent police power—the authority to regulate for the health, safety, morals, and general welfare of the public.



## Broad property rights

Applicant has the right to use their property in any way not plainly restricted by law.





## Approval required

**Must approve** an administrative application that complies with the applicable land use regulations.

Exceptions: variances and amended plats which include discretion.



## Vested Rights

Applicant has the right to have their land use application reviewed under the land use regulations in effect on the date you submitted your complete application and applicable to the information shown on your application.

Utah Code § § 10-9a-509, 17-27a-509



## Vested Rights

The local government **may not change the rules** that apply to the application, except in cases involving

- a pending ordinance or

- significant risk to public health and safety.





# Ambiguity

Can only require what is clearly stated in ordinance, law, or regulation.

Any ambiguity in laws must be interpreted in favor of allowing the proposed use.



## Illegal?

Does federal law put boundaries on it?

freedom of speech, religious practice, group homes, etc.

Does state law put boundaries on this?

gravel pits, billboards, IADU, etc.

Is it regulated in another ordinance?

Remember, conflicts interpreted in favor of allowing the use.



### Legal nonconforming use

“a use of land that was established at a time when the use was legal and that has continued, but that has become illegal because of a subsequent change in the land use regulations governing the land.”

Legal nonconforming uses may generally continue until abandoned.

If a use started before it was regulated, use can continue

# Conditional Use Permits

A conditional use permit is considered “permitted with conditions.”

**Impose reasonable conditions** that offset **reasonably anticipated** detrimental effects of the proposed use.

Must be in accordance with **objective** conditional use **standards** stated in local ordinance, and supported by substantial evidence in the record.

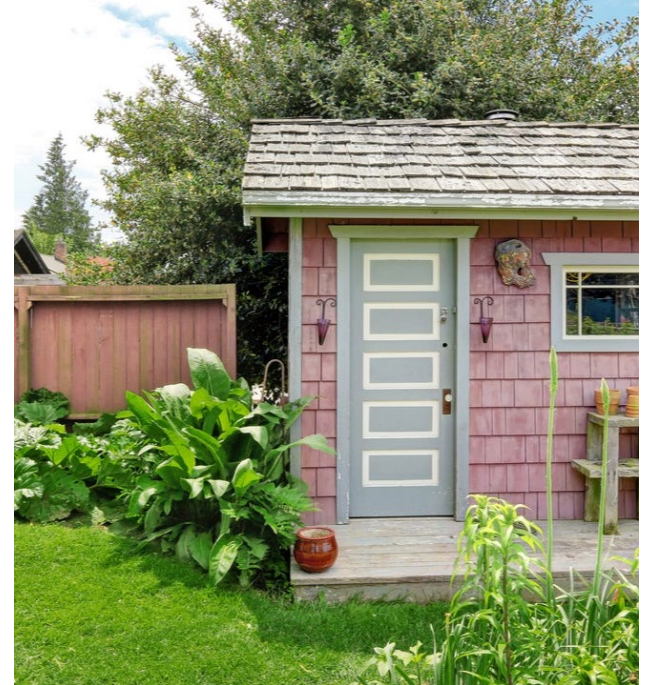


# Completed Noncompliant structures

A municipality **may not withhold a permit** or project approval for a project **because of a completed noncompliant structure on the same property** provided that the completed noncompliant structure:

- a) has been completed for **five years or more**;
- b) does **not pose a health**, life, or safety concern;
- c) is unrelated to, independent from, and not affected by the project; and
- d) is outside the scope of work under the permit for the project.

HB 518 (2024)





# Completed Noncompliant structures

Building that was finished without obtaining the necessary building permits, passing inspections, or securing a certificate of occupancy.

HB 518 (2024)



# Completed Noncompliant structures

Note that agencies may require additional permitting, engineering, or inspections of noncompliant structures IF it does pose a health, life, or safety concern.

Utah Code § 15a-1-104.4



# Gravel Pits

Limitations on Local Regulations

Utah Code § 17-41-402 protects farms and farming, industrial uses, critical infrastructure, and mines/mining.

May not prohibit, restrict, regulate, or otherwise limit critical infrastructure materials operations.

Need gravel pit owner permission to change zoning.



# Design elements

**May not regulate building design elements on single family and two-family residences**, including internal accessory dwelling units (IADUs).

This includes things such as color, cladding material, style, roof pitch, porches, windows, doors, garage doors, etc. This does not apply to certain historic homes.

Utah Code § § 10-9a-534, 17-27a-530



# Internal Accessory Dwelling Units

## May not require Conditional Use Permit for IADU

“In any area zoned primarily for residential use, the use of an internal accessory dwelling unit is a permitted use . . .”

Utah Codes § § 10-9a-530, 17-27a-526



# Impact Fees

May not charge impact fee for IADU, fire truck (on residential development), limits on charges to schools.

Cannot “double dip”

Must follow impact fee adoption process outlined in state code.

Utah Code § 11-36a-202

# Impact Fees



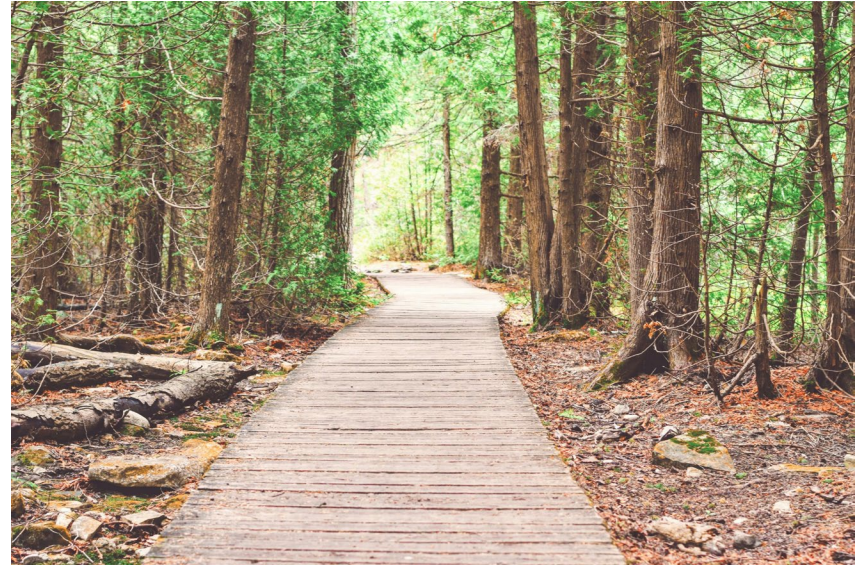


# Trails

Cannot use eminent domain for a trail unless alongside a roadway

Utah Code § 78B-6-501

Can require trail connection as exaction on development, can use impact fees to pay for trails.



# Review Fees

A municipality may not impose a fee for reviewing or approving plans that exceeds the lesser of the actual cost of performing the plan review and 65% of the building permit fee.

A municipality **may not** impose or collect a land use application fee that **exceeds the reasonable cost** of processing the application permit, or an inspection, regulation, or review fee that exceeds the reasonable cost of performing the inspection, regulation, or review.

Utah Code § § 10-9a-510, 17-27a-509





# Bonds

Must establish objective inspection standards for infrastructure and landscaping bonds.

No more than 100% of the cost to finish improvements plus 10% administrative costs.

Must establish a system for the **partial release of an improvement completion assurance** as portions of the required public improvements are competed and accepted in accordance with local land use regulations.

Must have at least 2 forms of completion assurance bonds.

May not require bonding for private improvements.

Utah Code § § 10-9a-604.5, 17-27a-604.5



# CITY OF HOUSTON

## CERTIFICATE OF OCCUPANCY

Owner or Occupant: HPC PARK CLEANERS

This Certificate of Occupancy must be posted in a conspicuous place on the premises and authorizes the Building(s) or Structure(s) to be occupied at:

1	MEMORIAL	DR			
Street no.	Street name		Suite	Lot	Block

CHANGE OF USE - CLEANERS TO LEASING OFFICE	1-2-5-B-B-12 IBC	N/A
Occupancy Use		Occ. Load

	002		5	B	B
Subdivision	Stories	Date	Type	Group	Rating

The work listed hereon has been duly inspected and found to comply with City of Houston Building Code requirements for the occupancy group and use shown. This certificate covers ONLY the work described above.

### NOTICE

The building official is authorized to, in writing, suspend or revoke a certificate issued under the provisions of the Building Code as per section 105.6. Alterations without the required permits and inspections may, as per section 105.1 of the Building Code, invalidate this certificate.

THIS CERTIFICATE DOES NOT CERTIFY COMPLIANCE WITH THE 'AMERICAN WITH DISABILITIES' ACT.

## Certificates of Occupancy

Must issue a certificate of occupancy if the applicant has met all requirements essential for public health, public safety, and general welfare of the occupants.

Issues not related to public health, safety, and general welfare may be dealt with through code enforcement.

Utah Code 10-9a-509



Prepared By Shelby Araujo

Project Number: 1

Receipt Number: 7





For Mark Savasta, CFM, CBO, MCP  
Building Official for the City of Houston

# CITY OF HOUSTON

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Street no.	Street name		Suite	Lot	Block

CHANGE OF USE - CLEANERS TO LEASING OFFICE 1-2-5-B-B 12 IBC	N/A
Occupancy Use	Occ. Load

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## Certificates of Occupancy

### Contradicted by 10-9a-802

“(2)(a) Except as provided in Subsections (3) though (6), a municipality may enforce the municipality's ordinance by withholding a building permit or certificate of occupancy.”

*Shelby M. Araujo*

Prepared By Shelby Araujo

Project Number: 1

Receipt Number: 7



*Mark Savata*

For Mark Savata, CFM, CBO, MCP  
Building Official for the City of Houston

### Utah Code 10-9a-802

# Asphalt

Cannot require that asphalt be installed prior to COO.

IFC 3310.1.3.3. If an improvement completion assurance has been posted, a local jurisdiction may not require permanent roads, asphalt, or concrete on temporary roads, before final approval of the structure served by the road.

Utah Code § 15A-5-205.6



# Billboards

Are a special category. Total of 99 instances of word “Billboard” in LUDMA.

Nonconforming/noncomplying billboards may not be amortized and then terminated like all other uses.

Upgrading billboards legal.

Utah Codes § § 10-9a, and 17-27a



# Food Trucks

May not regulate size of mobile business.

Require criminal background check on operator (unless an ice cream truck).

Cannot require demonstration how food truck will comply with land use or zoning ordinances at business license.

Utah Code § 11-56-103





# Short-term rentals

- Can prohibit from IADUs.
  - Can prohibit outright.
  - Can require business license and manager within reasonable distance.
  - Can now use advertisement/reviews on websites as evidence of use.
- 
- Remember legal non-conforming uses.
  - Suggest getting ordinances in place.



# Moratoria

- Called “Temporary Land Use Regulation”
- Pause on processing land use applications.
- Up to six months long.
- Must find “compelling, countervailing public interest” or the area is unregulated.
- Pauses applications already received.
- Exception to vested rights.
- Retroactively applied.

Utah Code 10-9a-504, 17-27a-504.





# Support for Moratoria

- Incredibly high bar
- “Compelling, countervailing public interest”
- Emergency situation which cannot be foreseen.
- Substantial risk to public’s health, safety, or welfare.
- Examples: earthquake destroys sewer plant, dam breaks flooding the community, Palisades fire in California.



# Pending Ordinance Doctrine

- Pause on processing land use applications.
- Up to six months long.
- ~~• Must find “compelling, countervailing public interest” or the area is unregulated.~~
- Applies to all applications received after zoning change is formally initiated.
- ~~• Pauses applications already received.~~
- ~~• Exception to vested rights.~~
- ~~• Retroactively applied.~~

Utah Code 10-9a-509, 17-27a-509.



# Support for Pending Ordinance

- Just like any other ordinance.
- Low standard
- Legislative decisions will be upheld if reasonably debatable that the decision promotes the general welfare.



# Development Agreements

**May not require a property owner to enter into a development agreement** as a condition of approval when the local ordinance establishes all applicable regulations for development of the land, and the applicant complies with the regulations.

Utah Code § § 10-9a-532, 17-27a-528.





## Speed of building permit review for SFR and duplex

If a land use authority **fails to complete the review** within the allotted time frames, and if an **architect or engineer has stamped the plans**, the applicant may **consider the plans approved**.

For subdivision applications,  
may not require more than  
**four review cycles**,  
primarily for engineering  
plans.



## Uses which enjoy specific protections:

- Internal accessory dwelling units,
- Conditional use permits
- Billboards/offsite signs
- Gravel pits
- Religious uses
- Group homes
- Speech
- Agriculture/farming
- Moratoria
- Requiring developers to give something to the public (money, impact fee, land, improvements)

