

Land Use Planning 101: State Law, Best Practices & Considerations

Office of the Property Rights Ombudsman

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The Office of the Property Rights Ombudsman

Supports local agencies and citizens by providing:

- **Information and education** to explain land use law and legal processes.
- **Negotiation liaison** between property owners and local or state officials.
- **Mediation** of eminent domain and land use disputes.
- Research on specific issues of land use law, and prepare **Advisory Opinions** that attempts to resolve the dispute in accordance with the prevailing law



<https://propertyrights.utah.gov/>

Planning Basics

**When I'm told I need a permit
to build on my own property.**



Land Use Development & Management Act (LUDMA) Purposes

(1) The purposes of [LUDMA] are to:

- (a) provide for the health, safety, and welfare;
- (b) promote the prosperity;
- (c) improve the morals, peace, good order, comfort, convenience, and aesthetics of each municipality and each municipality's present and future inhabitants and businesses;
- (d) protect the tax base;
- (e) secure economy in governmental expenditures;
- (f) foster the state's agricultural and other industries;
- (g) protect both urban and nonurban development;
- (h) protect and ensure access to sunlight for solar energy devices;
- (i) provide fundamental fairness in land use regulation;
- (j) facilitate orderly growth and allow growth in a variety of housing types; and
- (k) protect property values.



Utah Municipal Code §10-9a

General Plan

- A mandated document that guides the growth and development of your community
- Sets land use visions and policies for your community
- Should consider today and the future (typically 10-20 year horizon)
- Intended to be a “living document” to adapt to desired changes in your community



Utah Code §10-9a-4 establishes the requirement for municipalities to establish and maintain a general plan

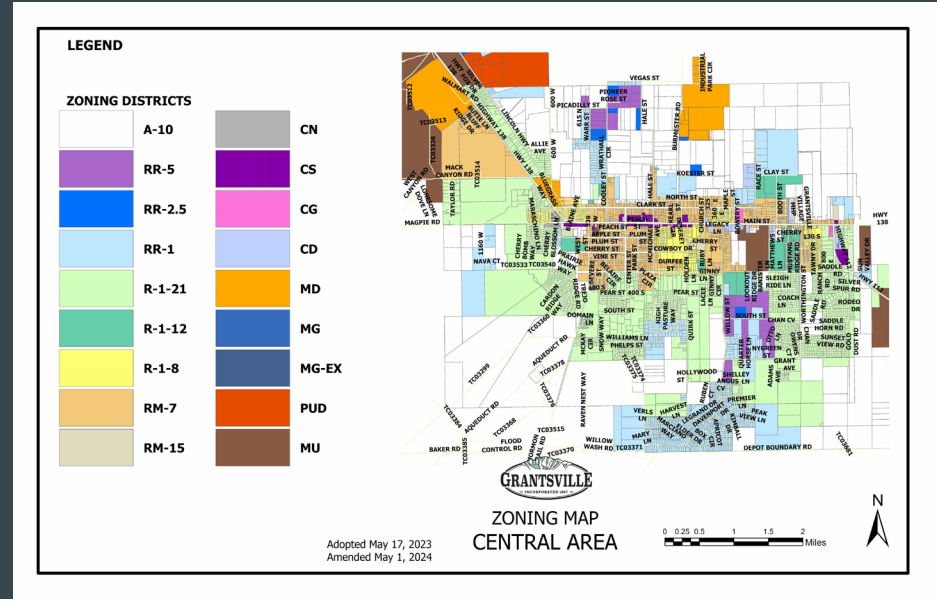
Land Use Ordinances

- The written law duly adopted by the local legislative authority that regulates land development in your community
- Includes planning, zoning, development, and subdivision ordinances
- Best Practice: Your ordinances should implement your General Plan



Zoning

- Local regulations to manage the look and feel of a community
- Control land use, density, and physical dimensions of development
- Intended to avoid conflicts between certain land uses for the protection and betterment of the community
- Best Practice: Your Zoning should implement your General Plan in accordance with your Land Use Ordinances



Roles & Responsibilities

Role of a City/Town Council

City/Town Councils serve as the legislative decision-making body for a local agency. Such decisions include:

- General Plan and amendments
- Land use ordinances, regulations, and design standards (proposed and amending existing)
- Zoning (proposed and amending existing)
- Annexation decisions
- Adoption of fee schedules



**CITY COUNCIL
MEETING**

Utah Codes §10-9a-3 and 3b detail the roles and responsibilities of local municipal government

Role of a Planning Commission

Planning Commissions are pivotal for land use management. In an advisory role, the Commission reviews and makes recommendations to the legislative body for:

- General Plan and amendments
- Land use regulations (proposed and amending existing)
- Review of certain applications to address consistency with adopted land use regulations



Utah Code §10-9a-302 establishes the requirement for Planning Commissions

Role of a Land Use Authority*

A Land Use Authority is:

- (a) a person, board, commission, agency, or body, including the local legislative body, designated by the local legislative body to act upon a land use application; or
- (b) if the local legislative body has not designated a person, board, commission, agency, or body, the local legislative body.



Utah Code §10-9a-103-30 provides the definition of a Land Use Authority

**Not to be confused with an "Administrative Land Use Authority," per 10-9a-604.1*

Legislative vs Administrative Decision Making

Legislative decisions generally involve making laws of general applicability and are based on the weighing of broad, competing policy considerations.

Typical Legislative Decisions

- Adoption & amendment of the general plan
- Enactment & amendment of land use ordinances and development standards
- Enactment of a zone map & approval of a zone change
- Annexation decisions

Legal Standard of Review

1. Decision must be consistent with applicable state and federal law (cannot be illegal)
2. It must be “reasonably debatable” that the decision could advance the general welfare or public interest and is consistent with the State LUDMA

Considerations When Making Legislative Decisions

- Local legislative decisions may not violate applicable state or federal law
- If it is “reasonably debatable” that the decision is consistent with the public interest, a court will likely uphold the decision as legal
- The legislative body should attempt to strike an appropriate balance between the public interest and private property rights, where the two conflict or may simply not align

Considerations When Making Legislative Decisions

Role of the Public in Legislative Decisions

- The legislative body should take into consideration input from the public, property owners, and other interested parties, including preferences and opinions. It is up to the legislative body to determine how much weight to give to any preference or opinion
- The legislative body may also receive input from the public for the purpose of gathering facts and evidence to support its conclusions and its decision

Legislative vs Administrative Decision Making

Administrative decisions generally involve applying existing codes to a particular development proposal, based on individual facts and circumstances.

Typical Administrative Decisions

- Subdivisions (single-family, two-family, and townhome)
- Conditional use permit
- Site plan
- Building Permit
- Variances

Legal Standard of Review

1. Decision must be consistent with applicable state and federal law, local ordinances, and any vested rights (cannot be illegal)
2. Regarding factual determinations, the decision must be supported with substantial evidence

Considerations When Making Administrative Decisions

- The land use authority must apply the “plain language” of land use regulations to a land use application.
- If an application meets the requirements, it should be timely approved.
- Where a regulation “does not plainly restrict the land use application,” or could reasonably be read to support different interpretations, the land use authority must interpret and apply the regulation to “favor” the proposals in the land use application.
- The land use authority must support its decision with “substantial evidence.”

Considerations When Making Administrative Decisions

Role of the Public in Administrative Decisions

- The land use authority may not rely on public opinion or preferences when making an administrative decision
- The land use authority may receive input from the public for the purpose of gathering facts and evidence to support its conclusions and its decision, in accordance with adopted standards

Common Questions

Vesting

- “Vesting” refers to the acquiring of nonforfeitable rights
- §10-9a-509 states that an applicant is entitled to substantive review under the currently adopted regulations following (1) the submission of a complete application package, and (2) payment of applicable fees. I.e., they have a “vested” right to review under the rules currently in place.
- Once approved, an agency may not require changes*. An applicant also may not make changes to the approved application. An applicant and agency may mutually agree upon requested changes.

**Certain provisions and exceptions can apply*

Common Questions

Noticing

- §10-9a-2 details the specific actions that require a notice for a public hearing.
- In general, public hearings must be held for financial issues and on land use control ordinances and policies.
- If multiple applications are associated with one project, noticing requirements and details should carefully be considered to keep administrative and legislative actions appropriately assigned.
 - EXAMPLE: The new subdivision requirements do not allow for more than one (1) public hearing for a preliminary subdivision application.

Common Questions

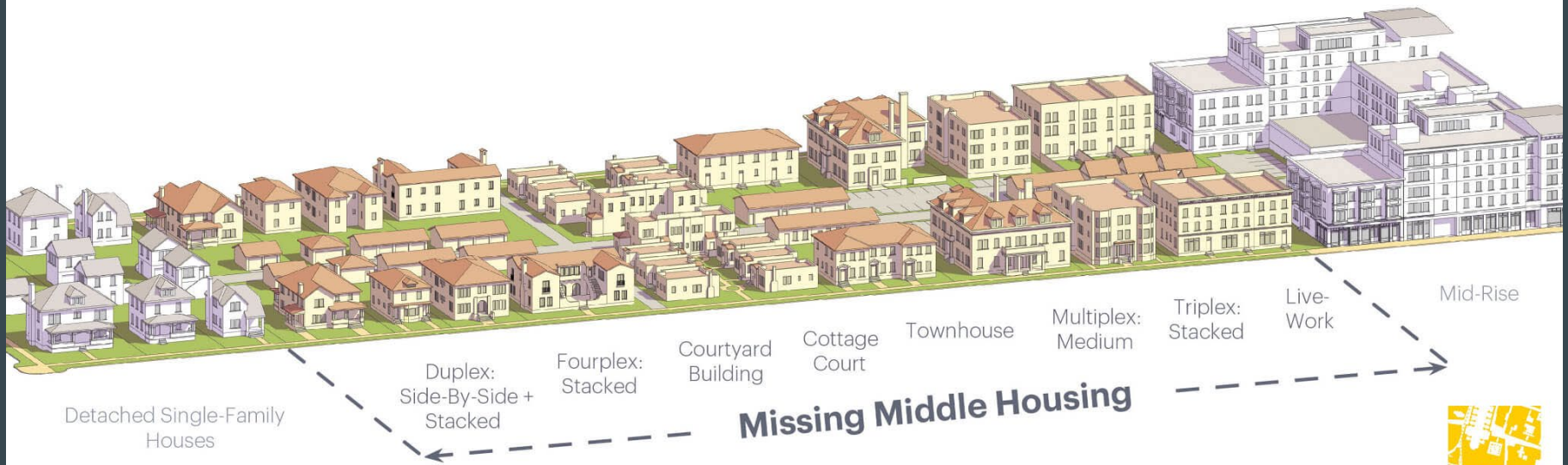
Amendments to Land Use Ordinances

- §10-9a-5 provides the allowance for a local agency's legislative body to enact land use regulations via ordinance.
- Amendments to established ordinances or adoption of new ordinances may create instances of “legal non-conforming” uses or structures.
 - These uses or structures may remain actively in place, as they were legally established or permitted prior to the amended or new ordinance.
 - New or revised standards would apply to all new development or specified levels of redevelopment

Common Questions

Current Hot Topics in Housing Supply and Production

- Accessory Dwelling Units (ADUs)
 - Can be either internal or detached
 - §10-9a-530 establishes internal ADUs as permitted, with associated criteria
 - ULCT resources for ADU policy considerations can be found on the Land Use Academy of Utah (LUAU) website at luau.utah.gov
- Missing Middle Housing (MMH)
 - Refers to housing units that range in size and layout between traditional single-family units and apartment complexes; including ADUs, multi-plexes, cottage homes, and more.
 - Utah's own MMH Toolkit is currently being developed. Check LU AU soon for this resource!



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Legislative Changes to the Subdivision Process

SB 174 – Subdivision Review & Approval Process Highlights

2023 Session; created Code Sections ~~9A-604.1~~ & ~~10A-604.2~~

- Must designate an “Administrative Land Use Authority” (ALUA)
- Only applies to subdivisions for 1 or 2-family dwellings and townhomes
- Preliminary and Final Plats only
- Applicant may request a pre-application meeting
- An Administrative Land Use Authority may complete a Preliminary Plat review by staff, or in a PC meeting; may only hold one public hearing
- Final Plat may not be reviewed by Council or Planning Commission

Administrative Land Use Authority (ALUA)

An Administrative Land Use Authority is:

- (a) an individual, board, or commission, appointed or employed by a municipality, including municipal staff or a municipal planning commission.
- (b) does not include a municipal legislative body or a member of a municipal legislative body.



Utah Code §10-9a-604.1 provides the definition of an Administrative Land Use Authority, which applies to subdivision applications for single-family dwellings, two-family dwellings, or townhomes

SB 174 – Subdivision Review & Approval Process Details

- Requested preapplication meetings must be scheduled within 15 business days
- Initial review of Preliminary Plat must be completed within 15 business days of receiving a complete application if a municipality has a population of 5,000+ (30 days is under 5,000)
- Review of Final Plat must be completed within 20 days of receiving a complete application if a municipality has a population of 5,000+ (40 days is under 5,000)
- Maximum of 4 review cycles permitted
- Applicant must respond to required changes they disagree with in writing

SB 174 – Subdivision Review & Approval Process Details (cont.)

- A subsequent review cycle may not begin until all comments are addressed by the applicant
- If an application is not approved following all review cycles, the agency shall notify the applicant in writing of the application deficiencies and their right to appeal the determination through a designated appeal authority

Updated Process Timeline: For most larger cities and counties, the new process must be implemented by Feb. 1, 2024. All other cities and counties must implement the new process by Dec. 31, 2024.

SB 174 – Subdivision Review & Approval Process Flowchart

1

- Applicant requests pre-application meeting (optional)
- Municipality schedules meeting within **15 business days**

2

- Applicant submits a complete Preliminary Subdivision Application
 - The ALUA must act on the application within **15/30 business days**
 - App review may be completed at staff level or at no more than one public hearing. Approval is required if all standards are met.

SB 174 – Subdivision Review & Approval Process Details (cont.)

3

- Applicant submits a complete Final Subdivision Application
- ALUA must review the submittal within 20/40 business days of submission.

4

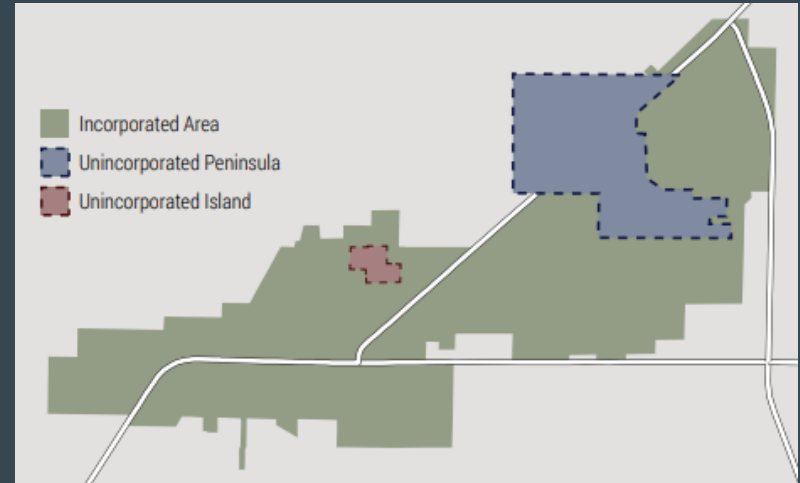
- ALUA responds to the applicant with:
 - Approval of the application, or
 - request for additional information or modifications. This cycle may repeat no more than four (4) times.

Planning Basics (cont.)

Annexation

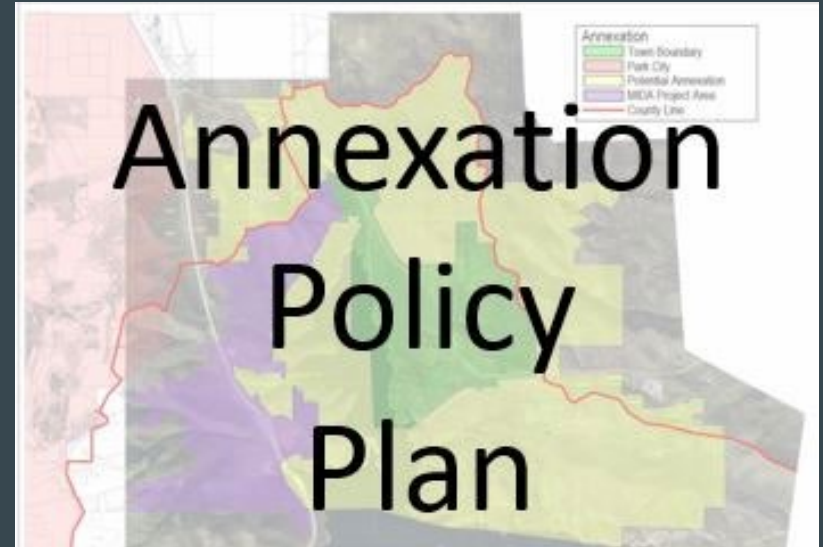
Utah Code Ann. § 10-2-4

- Annexation is the process of bringing property into a city's limits. Cities annex territory to provide urbanizing areas with municipal services and to exercise regulatory authority necessary to protect public health and safety.
- Municipalities may annex territory by legislative action, but there are a number of regulations and requirements to understand. Always review these with your legal counsel prior to action.



Annexation

- Per Utah Code Ann§ 10-2-401.5, each agency must have an Annexation Policy Plan.
- Review of state codes and local regulations should be completed with legal counsel prior to annexation action.
- New State regulations regarding annexation petitions (Section 403) become effective 11/1/2024. Consult your city attorney for specifics and any needed changes to your current process.



Exactions

An exaction is a mandatory contribution required by a governmental entity as a condition of approval for a development application and may include:

1. Dedication of property
2. Construction and dedication of public improvements
3. Monetary payments (including impact fees)



Exactions – The Rough Proportionality Test

A municipality may impose an exaction on development proposed in a land use application when it satisfies the following two-part “rough proportionality” test:

- a. an essential link exists between a legitimate governmental interest and each exaction; and
- b. each exaction is roughly proportionate, both in nature and extent, to the impact of the proposed development.

Utah Code Ann. § 10-9a-508(1)



Finding the Right Balance

- It starts with following your ordinances and development standards.
- Requiring a developer to build improvements that will clearly serve only, or at least primarily, the proposed development, typically satisfies the rough proportionality test, and is lawful
- Requiring the developer to bear the burden of constructing a system improvement that will benefit and serve a larger region, or the community as a whole, likely violates the rough proportionality test, and is unlawful



RED FLAG: *If a requirement in your code, when applied to a specific development proposal, requires the property owner to address impacts beyond their own, then it may be unlawful.*

Development Agreements

Utah Code Ann. § 10-9a-532

(1) A Subject to Subsection (2), a municipality may enter into a development agreement containing any term that the municipality considers necessary or appropriate to accomplish the purposes of this chapter, including a term relating to:

- a) a master planned development;
- b) a planned unit development;
- c) an annexation;
- d) affordable or moderate income housing with development incentives;
- e) a public-private partnership; or
- f) a density transfer or bonus within a development project or between development projects.

Development Agreements (cont.)

Utah Code Ann. § 10-9a-532

(2)(a) A development agreement may not:

- i. limit a municipality's authority in the future to:
 - A. enact a land use regulation; or
 - B. take any action allowed under Section ~~10-84~~ 10-84;
- ii. require a municipality to change the zoning designation of an area of land within the municipality in the future; or
- iii. allow a use or development of land that applicable land use regulations governing the area subject to the development agreement would otherwise prohibit, unless the legislative body approves the development agreement in accordance with the same procedures for enacting a land use regulation under Section 10-9a-502, including a review and recommendation from the planning commission and a public hearing.

Development Agreements (cont.)

Utah Code Ann. § 10-9a-532

(b) A development agreement that requires the implementation of an existing land use regulation as an administrative act does not require a legislative body's approval under Section 94-602.

(c) Subject to Subsection (2)(d), a municipality may require a development agreement for developing land within the municipality if the applicant has applied for a legislative or discretionary approval, including an approval relating to:

- i. the height of a structure;
- ii. a parking or setback exception;
- iii. a density transfer or bonus;
- iv. a development incentive;
- iv. a zone change; or
- v. an amendment to a prior development agreement.

Development Agreements (cont.)

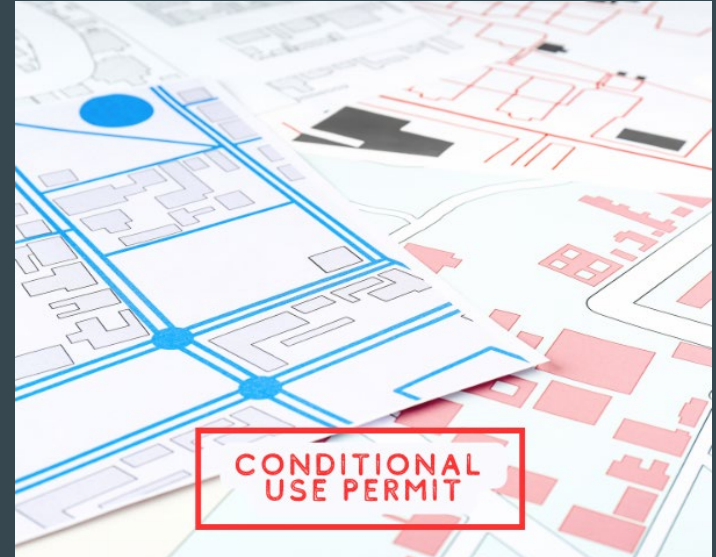
Utah Code Ann. § 10-9a-532

(d) A municipality may not require a development agreement as a condition for developing land within the municipality if:

- i. the development otherwise complies with applicable statute and municipal ordinances;
- ii. the development is an allowed or permitted use; or
- iii. the municipality's land use regulations otherwise establish all applicable standards for development on the land.

Conditional Use Permit (CUP)

- Local codes may require that conditional uses comply with “objective standards set forth in an applicable ordinance.”
- An application for a conditional use permit is entitled to approval if:
 - The proposed use complies with applicable requirements; and
 - Reasonable conditions are proposed, or can be imposed, to mitigate any “reasonably anticipated detrimental effects” of the proposed use “in accordance with applicable standards.”



Conditional Use Permit (CUP)

- Examples of Standards that May Address Potential Detrimental Effects:
 - Impacts to street service levels and/or traffic patterns
 - Impacts on adequacy of utility systems and service delivery
 - Impacts on connectivity and pedestrian/bicyclist safety
 - Impacts related to unreasonable or atypical noise, odors, and other environmental impacts such as dust, fumes, smoke, vibrations, chemicals, toxins, heat, etc.
 - Impacts related to hours of operation
 - Impacts related to signs or exterior lighting and compatibility
 - Impacts related to provision of emergency services

Variances

- The Appeal Authority may grant a variance only if:
 - i. 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;
 - ii. there are special circumstances attached to the property that do not generally apply to other properties in the same zone;
 - iii. granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zone;



Variances

- The Appeal Authority may grant a variance only if:
 - iv. the variance will not substantially affect the general plan and will not be contrary to the public interest; and
 - v. the spirit of the land use ordinance is observed and substantial justice done.
- Unreasonable hardship may not be self-imposed or economic and must be “peculiar” to the property.
- Special circumstances must relate to the hardship and must deprive the property of privileges others in the same zone enjoy.



Code Enforcement	Public Meetings vs Public Hearings	Sprawl vs Infill
Accessory Dwelling Units	Density	Conditions of Approval
Public Noticing	General Plans	Zone Changes
Parking Requirements	Impact Fees	Design Standards
Conditional Uses	Development Agreements	Public Improvements