

Land Use Planning State Law & Best Practices

Office of the Property Rights

Rob Terry

Statewide Land Use Training

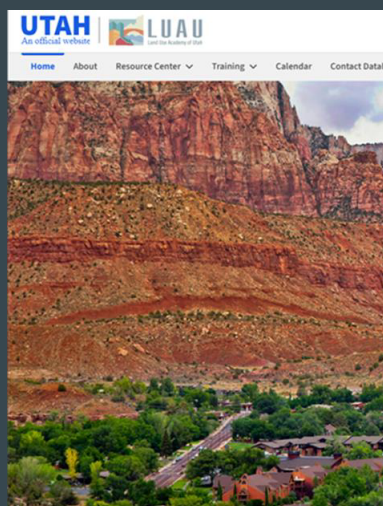
robterry@uta.edu

The Office of the Property Rights Omb

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

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Your home for land use training

Planning B

Land Use Development & Management

- (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.

**When I'm told I need
to build on my own**



General Plan

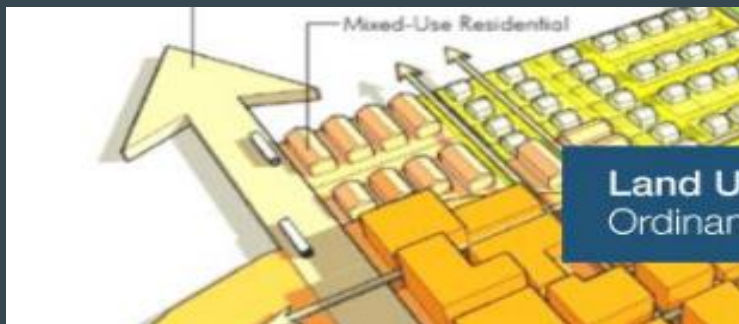
- A mandated document that guides the growth and development of your community
- Sets land use visions and policies for your community
- Should consider today and the future (typically 10-20 year horizon)
- Intended to be a “living document” to adapt to desired changes in your community



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Land Use Ordinances

- The written law duly adopted by the local legislative body that governs land development in your community
- Includes planning, zoning, development, and other regulations
- Best Practice: Your ordinances should implement the community's vision



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 & Respons

Role of a City/Town Council

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

They make laws of general applicability that are based on the weighing of broad, competing policy considerations.

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.



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.

Legislative vs Administrative Decision

Legislative decisions generally involve m
applicability, and are based on the weigh
policy considerations.

Typical Legislative Decisions

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

Considerations When Making Legislative

- Local legislative decisions may not violate federal law
- If it is “reasonably debatable” that the law is in the general welfare or public interest and does not violate LUDMA, a court will likely uphold the law
- The legislative body should attempt to find a balance between the public interest and the rights of individuals where the two conflict or may simply not be reconcilable

Considerations When Making Legislative

Role of the Public in Legislative Decision

- The legislative body should take into consideration the interests of property owners, and other interested parties. It is up to the legislative body to give weight to any preference or opinion.
- The legislative body may also receive input from the public for the purpose of gathering facts and evidence to inform their decision.

Legislative vs Administrative Decision

Administrative decisions generally involve a particular development proposal, based on specific circumstances.

Typical Administrative Decisions

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

Considerations When Making Administrative

- Local legislative decisions may not violate applicable law.
- The land use authority must apply the “plain language” rule to a land use application.
- If an application meets the requirements, it should be approved.
- Where a regulation “does not plainly restrict the use,” the authority may reasonably be read to support different interpretations. The authority should interpret and apply the regulation to “favor” the applicant.
- The land use authority must support its decision with evidence.

Considerations When Making Administrative

Role of the Public in Administrative Decisions

- The land use authority may not rely on public input when making an administrative decision
- The land use authority may receive input from the public as part of gathering facts and evidence to support a decision in accordance with adopted standards

Administrative Land Use Authority (AL

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.

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Planning Basic

Annexation

Utah Code Ann. § 10-2-8 (Effective 5/7/2025)

- 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. § 10-2-803, 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) became effective 11/1/2024. Consult your city attorney for specifics and any needed changes to your current process.
- Changes to the annexation code were adopted during the 2025 session, mainly clean-up language.

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 Impacts
 - Impacts to street service levels and/or traffic patterns
 - Impacts on adequacy of utility systems and services
 - Impacts on connectivity and pedestrian/bicycle facilities
 - Impacts related to unreasonable or atypical noise and vibration impacts such as dust, fumes, smoke, vibration
 - Impacts related to hours of operation
 - Impacts related to signs or exterior lighting and aesthetics
 - Impacts related to provision of emergency services

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

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.

Tools for Thinking About Rough Propo

System Improvements vs. Project Improvements:

A *system improvement* is generally understood to be a public facility that is intended to provide services to larger regions of the community or to the community at large.

A *project improvement* is generally understood to be an improvement planned and designed to provide services primarily to the proposed development, and that is necessary for the use and convenience of the future users in the proposed development

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

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
Hearings

Accessory Dwelling Units

Density

Public Noticing

General Plan

Parking Requirements

Impact Fees

Conditional Uses

Development Agree