Land Use Training Handbook

for Effective Land Use & Decision Making

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for Elected and Appointed Officials in Utah

The General Plan—What is it?

David Church, ULCT

A general plan is required for all cities and towns if the city or town wants to be in the land use A general plan is required for all cities and towns if the city or town wants to be in the land use control business. Simply put, if you want to tell people what they can and can't do with their property, you have to have a plan.

Sometimes, the general plan is referred to as a master plan or a comprehensive plan. Regardless of its title, there are certain procedural requirements to adopting a plan and some substantive minimums. These are set forth in the Utah State Code.[1] Some cities and towns have spent thousands of dollars creating plans, while others have spent little money and used volunteers and internal staff. It is impossible to say which of these courses of action have been more successful. The success of the plan is usually dependent upon the ordinances passed that are needed to implement the plan and the will of the city and town to comply with the plan.

The process to develop a plan begins at the planning commission. The planning commission provides notice of its intent to make a recommendation to the legislative body for the plan or the plan amendment and then initiates the process of preparing its recommendations. This notice of intent is given to specific affected entities in counties of the first and second class. No notice of intent is required in the smaller counties.

At a minimum, the proposed general plan should include maps, charts and explanations of the planning commission's recommendations for certain elements.[2] The elements should include a land use element; a transportation and circulation element; and in cities, and not towns, a moderate-income housing element. The proposed plan may also include such things as an environmental element; a public services and facilities element; a rehabilitation, conservation element consisting of plans and programs for historic preservation and the elimination of blight; and an economic development element and recommendations for implementing all or any portion of the general plan.

After completing its proposed general plan, the planning commission must schedule and hold a public hearing on the proposed plan. Prior to the public hearing, notice of the hearing must be given to the public. This notice must contain the time and place of the public hearing. The notice must be given at least ten calendar days before the public hearing. It should be published in a newspaper of general circulation in the area and be posted in at least three public locations within the city or town or on the city or town official web site. In addition, the provisions of the Utah Open and Public Meetings Act must be complied with. The planning commission can hold as many public hearings as it feels necessary. However, it only needs to hold one.

After the planning commission has agreed on a recommended general plan, it forwards it to the city council for final action. The city council may make any revisions to the proposed general plan or amendments that it considers appropriate. The city council does not need to hold a public hearing on the general plan, but it may if it wishes. If it does hold a public hearing it should give proper

[1] Utah Code 10-9a-401 et seq.

[2] Utah Code 10-9a-403(2)(a).

public notice of the hearing. The required notice is the same as that for the public hearing in front of the planning commission. The general plan should be adopted as an ordinance. Once the general plan is adopted, it is an advisory guide for land use decisions.[3] The city could make the general plan mandatory through ordinance.

After the general plan is in effect, no street, park, or other public way, grounds, places, or space, no publicly owned building or structure, and no public utility, whether publicly or privately owned, may be constructed or authorized unless it conforms to the current general plan.[4]

As part of the planning process, cities and towns adopt what are called official maps. An official map is a map that is recorded in the county recorder's office that shows actual and proposed rights-of-way and setbacks for highways and other transportation facilities. It may also provide the basis for restricting development in these designated rights-of-way and allow the city or town time to purchase or otherwise reserve the land. To be an official map it must be adopted as part of the city's general plan.[5] Adoption of an official map does not automatically require a landowner to dedicate and construct the street as a condition of development approval except under very specific circumstances. Those circumstances are that the street is found to be necessary by the city or town because of the proposed development and the dedication is a legitimate exaction as opposed to an excessive one. Adoption of the official map does not require the municipality to immediately purchase the property it has designated for eventual use as a public street.[6]

These restrictions may make it seem that an official map is ineffective. This is far from true. An official map informs the public where future streets are going to be built. An official map can assist a city in its development plans and it can provide the basis for a city or town that requires a public road to be built as part of a development process. What an official map does not do is prevent development in areas where cities desire future streets. A city or town cannot hold up development because it has a beneficial map. It can purchase the property or, if the right circumstances are found to be present, require the road to be built as part of the development. Those circumstances are discussed in more detail in the section of this handbook dealing with exactions.

The general plans for all cities must contain a moderate income housing element. The law requires that the city review this element every two years. The purpose of the review is to determine whether or not moderate-income housing needs of the city are being met. A report setting forth the findings of the review must be prepared and sent to the Utah Department of Community and Culture and the local association of governments. As previously discussed, a general plan for towns does not have to have a moderate income housing element.

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[3] Utah Code 10-9a-405.

[4] Utah Code 10-9a-406.

[5] Utah Code 10-9a-103(33).

[6] Utah Code 10-9a-407.

The General Plan—
A Practical Vision for the Future
Requirements from the Utah State Code

Utah Code Title 10 Chapter 09
The Municipal Land Use Development and Management Act
http://www.le.state.ut.us/~code/code htm

Make not little plans; they have no magic to stir men's blood and probably themselves will not be realized. Make big plans; aim high in hope and work, remembering that a noble, logical diagram once recorded will never die, but long after we are gone will be a living thing, asserting itself with ever-growing insistency.

Daniel H. Burnham, architect (1846-1912).

10-9a-401. General plan required. Content.

(1) In order to accomplish the purposes of this chapter, each municipality shall prepare and adopt a comprehensive, long-range general plan for:

(a) present and future needs of the municipality; and

(b) growth and development of all or any part of the land within the municipality.

(2) The plan may provide for:

(a) health, general welfare, safety, energy conservation, transportation, prosperity, civic activities, aesthetics, and recreational, educational, and cultural opportunities;

(b) the reduction of the waste of physical, financial, or human resources that result from either excessive congestion or excessive scattering of population;

(c) the efficient and economical use, conservation, and production of the supply of:

(i) food and water; and

(ii) drainage, sanitary, and other facilities and resources;

(d) the use of energy conservation and solar and renewable energy resources;

(e) the protection of urban development;

(f) the protection or promotion of moderate income housing;

(g) the protection and promotion of air quality;

(h) historic preservation;

(i) identifying future uses of land that are likely to require an expansion or significant modification of services or facilities provided by each affected entity; and

(j) an official map.

(3) Subject to Subsection 10-9a-403(2), the municipality may determine the comprehensiveness, extent, and format of the general plan

10-9a-402. Information and technical assistance from the state.

Each state official, department, and agency shall:

(1) promptly deliver any data and information requested by a municipality unless the disclosure is prohibited by Title 63, Chapter 2, Government Records Access and Management Act; and

(2) furnish any other technical assistance and advice that they have available to the municipality without additional cost to the municipality.

10-9a-403. Plan preparation.

(1) (a) The planning commission shall provide notice, as provided in Section **10-9a-203**, of its intent to make a recommendation to the municipal legislative body for a general plan or a comprehensive general plan amendment when the planning commission initiates the process of preparing its recommendation.

(b) The planning commission shall make and recommend to the legislative body a proposed general plan for the area within the municipality.

(c) The plan may include areas outside the boundaries of the municipality if, in the planning commission's judgment, those areas are related to the planning of the municipality's territory.

(d) Except as otherwise provided by law or with respect to a municipality's power of eminent domain, when the plan of a municipality involves territory outside the boundaries of the municipality, the municipality may not take action affecting that territory without the concurrence of the county or other municipalities affected.

(2) (a) At a minimum, the proposed general plan, with the accompanying maps, charts, and descriptive and explanatory matter, shall include the planning commission's recommendations for the following plan elements:

(i) a land use element that:

(A) designates the long-term goals and the proposed extent, general distribution, and location of land for housing, business, industry, agriculture, recreation, education, public buildings and grounds, open space, and other categories of public and private uses of land as appropriate; and

(B) may include a statement of the projections for and standards of population density and building intensity recommended for the various land use categories covered by the plan;

(ii) a transportation and traffic circulation element consisting of the general location and extent of existing and proposed freeways, arterial and collector streets, mass transit, and any other modes of transportation that the planning commission considers appropriate, all correlated with the population projections and the proposed land use element of the general plan; and

(iii) for cities, an estimate of the need for the development of additional moderate income housing within the city, and a plan to provide a realistic opportunity to meet estimated needs for additional moderate income housing if long-term projections for land use and development occur.

(b) In drafting the moderate income housing element, the planning commission:

(i) shall consider the Legislature's determination that cities should facilitate a reasonable opportunity for a variety of housing, including moderate income housing:

(A) to meet the needs of people desiring to live there; and

(B) to allow persons with moderate incomes to benefit from and fully participate in all aspects of neighborhood and community life; and

(ii) may include an analysis of why the recommended means, techniques, or combination of means and techniques provide a realistic opportunity for the development of moderate income housing within the planning horizon, which means or techniques may include a recommendation to:

(A) rezone for densities necessary to assure the production of moderate income housing;

(B) facilitate the rehabilitation or expansion of infrastructure that will encourage the construction of moderate income housing;

(C) encourage the rehabilitation of existing uninhabitable housing stock into moderate income housing;

(D) consider general fund subsidies to waive construction related fees that are otherwise generally imposed by the city;

(E) consider utilization of state or federal funds or tax incentives to promote the construction of moderate income housing;

(F) consider utilization of programs offered by the Utah Housing Corporation within that agency's funding capacity; and

(G) consider utilization of affordable housing programs administered by the Department of Community and Culture.

(3) The proposed general plan may include:

(a) an environmental element that addresses:

(i) the protection, conservation, development, and use of natural resources, including the quality of air, forests, soils, rivers and other waters, harbors, fisheries, wildlife, minerals, and other natural resources; and

(ii) the reclamation of land, flood control, prevention and control of the pollution of streams and other waters, regulation of the use of land on hillsides, stream channels and other environmentally sensitive areas, the prevention, control, and correction of the erosion of soils, protection of watersheds and wetlands, and the mapping of known geologic hazards;

(b) a public services and facilities element showing general plans for sewage, water, waste disposal, drainage, public utilities, rights-of-way, easements, and facilities for them, police and fire protection, and other public services;

(c) a rehabilitation, redevelopment, and conservation element consisting of plans and programs for:

(i) historic preservation; and

(ii) the diminution or elimination of blight; and

(iii) redevelopment of land, including housing sites, business and industrial sites, and public building sites;

(d) an economic element composed of appropriate studies and forecasts, as well as an economic development plan, which may include review of existing and projected municipal revenue and expenditures, revenue sources, identification of basic and secondary industry, primary and secondary market areas, employment, and retail sales activity;

(e) recommendations for implementing all or any portion of the general plan, including the use of land use ordinances, capital improvement plans, community development and promotion, and any other appropriate action;

(f) provisions addressing any of the matters listed in Subsection 10-9a-401(2); and

(g) any other element the municipality considers appropriate.

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(i) the protection, conservation, development, and use of natural resources, including the quality of air, forests, soils, rivers and other waters, harbors, fisheries, wildlife, minerals, and other natural resources; and

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(e) recommendations for implementing all or any portion of the general plan, including the use of land use ordinances, capital improvement plans, community development and promotion, and any other appropriate action;

(f) provisions addressing any of the matters listed in Subsection **10-9a-401**(2); and

(g) any other element the municipality considers appropriate.

Checklist

General Plan or Amendment to the General Plan

This includes all actions required for both the planning commission and the legislative body, and staff (if present).

_____ 1. Place the plan or amendment on an agenda for the planning commission..

_____ 2. Provide the required notice of a meeting and a hearing by the planning commission to consider the application. State law sets the minimum notice requirements: 24-hour notice for meetings and ten days published notice for hearings. Local ordinances may require additional notice. (Note: There are separate notice requirements to "affected entities" for municipalities within the four largest counties on the Wasatch Front at 10-9a-203.)

_____ 3. Conduct at *least* one public hearing before the planning commission. The general plan should have public review and additional meetings to gather input may be necessary (but are not required).

_____ 4. The planning commission considers relevant evidence and opinion related to the content of the plan, the plan's conformity with state law, and whether or not the proposed plan or plan amendment complies with the goals of LUDMA (outlined in the Notes and Practice Tips), and contains the essential elements:

_____ a. A land use element, including agricultural protection zone issues, if applicable;

_____ b. A transportation element; and

_____ c. For cities, a moderate income housing element.

_____ 5. The planning commission takes a vote and recommends approval or denial of the plan, or amendment to the plan, to the legislative body. A proposed general plan or amendment may be modified by the planning commission as part of its recommendation. Important considerations are whether the proposal is in the best interest of the citizens and the community, and whether it complies with LUDMA.

_____ 6. Place the item on the next available agenda for the legislative body.

_____ 7. Provide the required 24-hour notice of a meeting by the legislative body to consider the application. A public hearing before the legislative body is not required by state law. Check to see if one is required by local ordinance.

_____ 8. Conduct at *least* one public meeting, as required by state statute, before the legislative body.

_____ 9. The legislative body considers the planning commission recommendation and any other relevant evidence and opinion related to whether or not the proposed plan or amendment is in the best interest of its citizens and the community, complies with the goals of LUDMA, and contains the essential elements as outlined in item 4 of this checklist.

_____ 10. The legislative body takes a vote and approves or rejects the plan or amendment. A proposed plan or amendment may be reviewed and revised by the legislative body prior to taking action without sending the plan or amendment back to the planning commission.

_____ 11. Preserve the proofs of notice, as well as the minutes of the meetings and hearings as required by GRAMA. There is no legal requirement that a "record" of the decision be preserved.

Notes and Practice Tips

The authority to regulate land use is derived from LUDMA and must be preceded by a general plan. A general plan must advance the purposes of LUDMA. Those purposes are:

1. To provide for the health, safety, and welfare, and promote the prosperity, improve the morals, peace and good order, comfort, convenience, and aesthetics of each municipality and its present and future in habitants and businesses:
2. To protect the tax base;
3. To secure economy in governmental expenditures;
4. To foster the state's agricultural and other industries;
5. To protect both urban and nonurban development;
6. To protect and ensure access to sunlight for solar energy devices;
7. To provide fundamental fairness in land use regulation; and
8. To protect property values.

The essential elements of the general plan are:

1. A land use element designating long-term goals; proposed location of land for housing, business, industry, agriculture, recreation, education, public buildings and grounds, open space, and other appropriate categories; and, for municipalities with agricultural protection areas, the plan must avoid proposing a land use within an agricultural protection area that is inconsistent with or detrimental to the use of the land for agriculture; and
2. A transportation and traffic circulation element; and
3. For cities, a moderate income housing element.

Public opinion and the preferences of the members of the planning commission and legislative body are both relevant and adequate for consideration in contemplating a general plan and amendments. There is no prohibition of consideration of "public clamor" as there would be in an administrative context, such as the approval of a subdivision or conditional use permit. Broad public input is encouraged during this process.

No findings or evidence are required to support a decision to adopt or to amend the general plan.

The legislative body's decision to adopt or amend a general plan will be deemed legal if it is reasonably debatable that the decision advances the purposes of LUDMA as noted above and does not violate a local, state, or federal law.

Amendments to the general plan may be initiated by the public, and are subject to referendum for 45 days after their enactment.