

Utah State Code Historic Preservation Code Sections

February 8, 2022

10-9a-503. Land use ordinance or zoning map amendments -- Historic district or area.

- (1) Only a legislative body may amend:
 - (a) the number, shape, boundaries, area, or general uses of any zoning district;
 - (b) any regulation of or within the zoning district; or
 - (c) any other provision of a land use regulation.
- (2) A legislative body may not make any amendment authorized by this section unless the legislative body first submits the amendment to the planning commission for the planning commission's recommendation.
- (3) A legislative body shall comply with the procedure specified in Section 10-9a-502 in preparing and adopting an amendment to a land use regulation.
- (4)
 - (a) As used in this Subsection (4):
 - (i) "Citizen-led process" means a process established by a municipality to create a local historic district or area that requires:
 - (A) a petition signed by a minimum number of property owners within the boundaries of the proposed local historic district or area; or
 - (B) a vote of the property owners within the boundaries of the proposed local historic district or area.
 - (ii) "Condominium project" means the same as that term is defined in Section 57-8-3.
 - (iii) "Unit" means the same as that term is defined in Section 57-8-3.
 - (b) If a municipality provides a citizen-led process, the process shall require that:
 - (i) more than 33% of the property owners within the boundaries of the proposed local historic district or area agree in writing to the creation of the proposed local historic district or area;
 - (ii) before any property owner agrees to the creation of a proposed local historic district or area under Subsection (4)(b)(i), the municipality prepare and distribute, to each property owner within the boundaries of the proposed local historic district or area, a neutral information pamphlet that:
 - (A) describes the process to create a local historic district or area; and
 - (B) lists the pros and cons of a local historic district or area;
 - (iii) after the property owners satisfy the requirement described in Subsection (4)(b)(i), for each parcel or, if the parcel contains a condominium project, each unit, within the boundaries of the proposed local historic district or area, the municipality provide:
 - (A) a second copy of the neutral information pamphlet described in Subsection (4)(b)(ii); and
 - (B) one public support ballot that, subject to Subsection (4)(c), allows the owner or owners of record to vote in favor of or against the creation of the proposed local historic district or area;
 - (iv) in a vote described in Subsection (4)(b)(iii)(B), the returned public support ballots that reflect a vote in favor of the creation of the proposed local historic district or area:
 - (A) equal at least two-thirds of the returned public support ballots; and
 - (B) represent more than 50% of the parcels and units within the proposed local historic district or area;

- (v) if a local historic district or area proposal fails in a vote described in Subsection (4)(b)(iii)(B), the legislative body may override the vote and create the proposed local historic district or area with an affirmative vote of two-thirds of the members of the legislative body; and
- (vi) if a local historic district or area proposal fails in a vote described in Subsection (4)(b)(iii)(B) and the legislative body does not override the vote under Subsection (4)(b)(v), a resident may not initiate the creation of a local historic district or area that includes more than 50% of the same property as the failed local historic district or area proposal for four years after the day on which the public support ballots for the vote are due.
- (c) In a vote described in Subsection (4)(b)(iii)(B):
 - (i) a property owner is eligible to vote regardless of whether the property owner is an individual, a private entity, or a public entity;
 - (ii) the municipality shall count no more than one public support ballot for:
 - (A) each parcel within the boundaries of the proposed local historic district or area; or
 - (B) if the parcel contains a condominium project, each unit within the boundaries of the proposed local historic district or area; and
 - (iii) if a parcel or unit has more than one owner of record, the municipality shall count a public support ballot for the parcel or unit only if the public support ballot reflects the vote of the property owners who own at least a 50% interest in the parcel or unit.
- (d) The requirements described in Subsection (4)(b)(iv) apply to the creation of a local historic district or area that is:
 - (i) initiated in accordance with a municipal process described in Subsection (4)(b); and
 - (ii) not complete on or before January 1, 2016.
- (e) A vote described in Subsection (4)(b)(iii)(B) is not subject to Title 20A, Election Code.

10-9a-527. Historic preservation authority.

- (1)
 - (a) A legislative body may designate a historic preservation authority.
 - (b) A legislative body may not designate the legislative body or the municipality's governing body as a historic preservation authority.
- (2) In making administrative decisions on land use applications, a historic preservation authority shall apply the plain language of the land use regulations to a land use application.
- (3) If a land use regulation does not plainly restrict a land use application, the historic preservation authority shall interpret and apply the land use regulation to favor the land use application.

10-9a-704. Time to appeal.

- (1) The municipality shall enact an ordinance establishing a reasonable time of not less than 10 days to appeal to an appeal authority a written decision issued by a land use authority.
- (2) In the absence of an ordinance establishing a reasonable time to appeal, a land use applicant or adversely affected party shall have 10 calendar days to appeal to an appeal authority a written decision issued by a land use authority.
- (3) Notwithstanding Subsections (1) and (2), for an appeal from a decision of a historic preservation authority regarding a land use application, the land use applicant may appeal the decision within 30 days after the day on which the historic preservation authority issues a written decision.

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 general 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) if the municipality is a town, 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)
 - (a) The general plan of a municipality, other than a town, shall plan for moderate income housing growth.
 - (b) On or before December 1, 2019, each of the following that have a general plan that does not comply with Subsection (3)(a) shall amend the general plan to comply with Subsection (3)(a):
 - (i) a city of the first, second, third, or fourth class;
 - (ii) a city of the fifth class with a population of 5,000 or more, if the city is located within a county of the first, second, or third class; and
 - (iii) a metro township with a population of 5,000 or more.
 - (c) The population figures described in Subsections (3)(b)(ii) and (iii) shall be derived from:
 - (i) the most recent official census or census estimate of the United States Census Bureau; or
 - (ii) if a population figure is not available under Subsection (3)(c)(i), an estimate of the Utah Population Committee.
- (4) Subject to Subsection 10-9a-403(2), the municipality may determine the comprehensiveness, extent, and format of the general plan.

10-9a-403. General 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 for residents of various income levels, 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 that:

(A) provides the general location and extent of existing and proposed freeways, arterial and collector streets, public transit, active transportation facilities, and other modes of transportation that the planning commission considers appropriate;

(B) for a municipality that has access to a major transit investment corridor, addresses the municipality's plan for residential and commercial development around major transit investment corridors to maintain and improve the connections between housing, employment, education, recreation, and commerce;

(C) for a municipality that does not have access to a major transit investment corridor, addresses the municipality's plan for residential and commercial development in areas that will maintain and improve the connections between housing, transportation, employment, education, recreation, and commerce; and

(D) correlates with the population projections, the employment projections, and the proposed land use element of the general plan; and

(iii) for a municipality described in Subsection 10-9a-401(3)(b), a plan that provides a realistic opportunity to meet the need for additional moderate income housing.

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

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

(A) to meet the needs of people of various income levels living, working, or desiring to live or work in the community; and

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

- (ii) for a town, may include, and for other municipalities, shall include, an analysis of how the municipality will provide a realistic opportunity for the development of moderate income housing within the next five years;
- (iii) for a town, may include, and for other municipalities, shall include, a recommendation to implement three or more of the following strategies:
 - (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) facilitate the rehabilitation of existing uninhabitable housing stock into moderate income housing;
 - (D) consider general fund subsidies or other sources of revenue to waive construction related fees that are otherwise generally imposed by the city;
 - (E) create or allow for, and reduce regulations related to, accessory dwelling units in residential zones;
 - (F) allow for higher density or moderate income residential development in commercial and mixed-use zones, commercial centers, or employment centers;
 - (G) encourage higher density or moderate income residential development near major transit investment corridors;
 - (H) eliminate or reduce parking requirements for residential development where a resident is less likely to rely on the resident's own vehicle, such as residential development near major transit investment corridors or senior living facilities;
 - (I) allow for single room occupancy developments;
 - (J) implement zoning incentives for low to moderate income units in new developments;
 - (K) utilize strategies that preserve subsidized low to moderate income units on a long-term basis;
 - (L) preserve existing moderate income housing;
 - (M) reduce impact fees, as defined in Section 11-36a-102, related to low and moderate income housing;
 - (N) participate in a community land trust program for low or moderate income housing;
 - (O) implement a mortgage assistance program for employees of the municipality or of an employer that provides contracted services to the municipality;
 - (P) apply for or partner with an entity that applies for state or federal funds or tax incentives to promote the construction of moderate income housing;
 - (Q) apply for or partner with an entity that applies for programs offered by the Utah Housing Corporation within that agency's funding capacity;
 - (R) apply for or partner with an entity that applies for affordable housing programs administered by the Department of Workforce Services;
 - (S) apply for or partner with an entity that applies for programs administered by an association of governments established by an interlocal agreement under Title 11, Chapter 13, Interlocal Cooperation Act;
 - (T) apply for or partner with an entity that applies for services provided by a public housing authority to preserve and create moderate income housing;
 - (U) apply for or partner with an entity that applies for programs administered by a metropolitan planning organization or other transportation agency that provides technical planning assistance;

- (V) utilize a moderate income housing set aside from a community reinvestment agency, redevelopment agency, or community development and renewal agency; and
- (W) any other program or strategy implemented by the municipality to address the housing needs of residents of the municipality who earn less than 80% of the area median income; and
- (iv) in addition to the recommendations required under Subsection (2)(b)(iii), for a municipality that has a fixed guideway public transit station, shall include a recommendation to implement the strategies described in Subsection (2)(b)(iii)(G) or (H).
- (c) In drafting the land use element, the planning commission shall:
 - (i) identify and consider each agriculture protection area within the municipality; and
 - (ii) avoid proposing a use of land within an agriculture protection area that is inconsistent with or detrimental to the use of the land for agriculture.
- (d) In drafting the transportation and traffic circulation element, the planning commission shall:
 - (i) consider the regional transportation plan developed by its region's metropolitan planning organization, if the municipality is within the boundaries of a metropolitan planning organization; or
 - (ii) consider the long-range transportation plan developed by the Department of Transportation, if the municipality is not within the boundaries of a metropolitan planning organization.
- (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;
 - (ii) the diminution or elimination of a development impediment as defined in Section 17C-1-102; 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) or (3); and

- (g) any other element the municipality considers appropriate.

10-9a-103. Definitions.

As used in this chapter:

- (1) "Accessory dwelling unit" means a habitable living unit added to, created within, or detached from a primary single-family dwelling and contained on one lot.
- (2) "Adversely affected party" means a person other than a land use applicant who:
 - (a) owns real property adjoining the property that is the subject of a land use application or land use decision; or
 - (b) will suffer a damage different in kind than, or an injury distinct from, that of the general community as a result of the land use decision.
- (3) "Affected entity" means a county, municipality, local district, special service district under Title 17D, Chapter 1, Special Service District Act, school district, interlocal cooperation entity established under Title 11, Chapter 13, Interlocal Cooperation Act, specified public utility, property owner, property owners association, or the Utah Department of Transportation, if:
 - (a) the entity's services or facilities are likely to require expansion or significant modification because of an intended use of land;
 - (b) the entity has filed with the municipality a copy of the entity's general or long-range plan; or
 - (c) the entity has filed with the municipality a request for notice during the same calendar year and before the municipality provides notice to an affected entity in compliance with a requirement imposed under this chapter.
- (4) "Affected owner" means the owner of real property that is:
 - (a) a single project;
 - (b) the subject of a land use approval that sponsors of a referendum timely challenged in accordance with Subsection 20A-7-601(5); and
 - (c) determined to be legally referable under Section 20A-7-602.8.
- (5) "Appeal authority" means the person, board, commission, agency, or other body designated by ordinance to decide an appeal of a decision of a land use application or a variance.
- (6) "Billboard" means a freestanding ground sign located on industrial, commercial, or residential property if the sign is designed or intended to direct attention to a business, product, or service that is not sold, offered, or existing on the property where the sign is located.
- (7)
 - (a) "Charter school" means:
 - (i) an operating charter school;
 - (ii) a charter school applicant that a charter school authorizer approves in accordance with Title 53G, Chapter 5, Part 3, Charter School Authorization; or
 - (iii) an entity that is working on behalf of a charter school or approved charter applicant to develop or construct a charter school building.
 - (b) "Charter school" does not include a therapeutic school.

(8) "Conditional use" means a land use that, because of the unique characteristics or potential impact of the land use on the municipality, surrounding neighbors, or adjacent land uses, may not be compatible in some areas or may be compatible only if certain conditions are required that mitigate or eliminate the detrimental impacts.

(9) "Constitutional taking" means a governmental action that results in a taking of private property so that compensation to the owner of the property is required by the:

(a) Fifth or Fourteenth Amendment of the Constitution of the United States; or

(b) Utah Constitution Article I, Section 22.

(10) "Culinary water authority" means the department, agency, or public entity with responsibility to review and approve the feasibility of the culinary water system and sources for the subject property.

(11) "Development activity" means:

(a) any construction or expansion of a building, structure, or use that creates additional demand and need for public facilities;

(b) any change in use of a building or structure that creates additional demand and need for public facilities; or

(c) any change in the use of land that creates additional demand and need for public facilities.

(12)

(a) "Development agreement" means a written agreement or amendment to a written agreement between a municipality and one or more parties that regulates or controls the use or development of a specific area of land.

(b) "Development agreement" does not include an improvement completion assurance.

(13)

(a) "Disability" means a physical or mental impairment that substantially limits one or more of a person's major life activities, including a person having a record of such an impairment or being regarded as having such an impairment.

(b) "Disability" does not include current illegal use of, or addiction to, any federally controlled substance, as defined in Section 102 of the Controlled Substances Act, 21 U.S.C. 802.

(14) "Educational facility":

(a) means:

(i) a school district's building at which pupils assemble to receive instruction in a program for any combination of grades from preschool through grade 12, including kindergarten and a program for children with disabilities;

(ii) a structure or facility:

(A) located on the same property as a building described in Subsection (14)(a)(i); and

(B) used in support of the use of that building; and

(iii) a building to provide office and related space to a school district's administrative personnel; and

(b) does not include:

(i) land or a structure, including land or a structure for inventory storage, equipment storage, food processing or preparing, vehicle storage or maintenance, or similar use that is:

(A) not located on the same property as a building described in Subsection (14)(a)(i); and

(B) used in support of the purposes of a building described in Subsection (14)(a)(i); or

(ii) a therapeutic school.

(15) "Fire authority" means the department, agency, or public entity with responsibility to review and approve the feasibility of fire protection and suppression services for the subject property.

(16) "Flood plain" means land that:

(a) is within the 100-year flood plain designated by the Federal Emergency Management Agency; or

(b) has not been studied or designated by the Federal Emergency Management Agency but presents a likelihood of experiencing chronic flooding or a catastrophic flood event because the land has characteristics that are similar to those of a 100-year flood plain designated by the Federal Emergency Management Agency.

(17) "General plan" means a document that a municipality adopts that sets forth general guidelines for proposed future development of the land within the municipality.

(18) "Geologic hazard" means:

(a) a surface fault rupture;

(b) shallow groundwater;

(c) liquefaction;

(d) a landslide;

(e) a debris flow;

(f) unstable soil;

(g) a rock fall; or

(h) any other geologic condition that presents a risk:

(i) to life;

(ii) of substantial loss of real property; or

(iii) of substantial damage to real property.

(19) "Historic preservation authority" means a person, board, commission, or other body designated by a legislative body to:

(a) recommend land use regulations to preserve local historic districts or areas; and

(b) administer local historic preservation land use regulations within a local historic district or area.

(20) "Hookup fee" means a fee for the installation and inspection of any pipe, line, meter, or appurtenance that connects to a municipal water, sewer, storm water, power, or other utility system.

(21) "Identical plans" means building plans submitted to a municipality that:

(a) are clearly marked as "identical plans";

(b) are substantially identical to building plans that were previously submitted to and reviewed and approved by the municipality; and

(c) describe a building that:

(i) is located on land zoned the same as the land on which the building described in the previously approved plans is located;

(ii) is subject to the same geological and meteorological conditions and the same law as the building described in the previously approved plans;

(iii) has a floor plan identical to the building plan previously submitted to and reviewed and approved by the municipality; and

(iv) does not require any additional engineering or analysis.

(22) "Impact fee" means a payment of money imposed under Title 11, Chapter 36a, Impact Fees Act.

(23) "Improvement completion assurance" means a surety bond, letter of credit, financial institution bond, cash, assignment of rights, lien, or other equivalent security required by a municipality to guaranty the proper completion of landscaping or an infrastructure improvement required as a condition precedent to:

- (a) recording a subdivision plat; or
- (b) development of a commercial, industrial, mixed use, or multifamily project.

(24) "Improvement warranty" means an applicant's unconditional warranty that the applicant's installed and accepted landscaping or infrastructure improvement:

- (a) complies with the municipality's written standards for design, materials, and workmanship; and
- (b) will not fail in any material respect, as a result of poor workmanship or materials, within the improvement warranty period.

(25) "Improvement warranty period" means a period:

- (a) no later than one year after a municipality's acceptance of required landscaping; or
- (b) no later than one year after a municipality's acceptance of required infrastructure, unless the municipality:

- (i) determines for good cause that a one-year period would be inadequate to protect the public health, safety, and welfare; and
- (ii) has substantial evidence, on record:
 - (A) of prior poor performance by the applicant; or
 - (B) that the area upon which the infrastructure will be constructed contains suspect soil and the municipality has not otherwise required the applicant to mitigate the suspect soil.

(26) "Infrastructure improvement" means permanent infrastructure that is essential for the public health and safety or that:

- (a) is required for human occupation; and
- (b) an applicant must install:
 - (i) in accordance with published installation and inspection specifications for public improvements; and
 - (ii) whether the improvement is public or private, as a condition of:
 - (A) recording a subdivision plat;
 - (B) obtaining a building permit; or
 - (C) development of a commercial, industrial, mixed use, condominium, or multifamily project.

(27) "Internal lot restriction" means a platted note, platted demarcation, or platted designation that:

- (a) runs with the land; and
- (b)
 - (i) creates a restriction that is enclosed within the perimeter of a lot described on the plat; or
 - (ii) designates a development condition that is enclosed within the perimeter of a lot described on the plat.

(28) "Land use applicant" means a property owner, or the property owner's designee, who submits a land use application regarding the property owner's land.

(29) "Land use application":

- (a) means an application that is:
 - (i) required by a municipality; and
 - (ii) submitted by a land use applicant to obtain a land use decision; and

- (b) does not mean an application to enact, amend, or repeal a land use regulation.
- (30) "Land use authority" means:
 - (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.
- (31) "Land use decision" means an administrative decision of a land use authority or appeal authority regarding:
 - (a) a land use permit;
 - (b) a land use application; or
 - (c) the enforcement of a land use regulation, land use permit, or development agreement.
- (32) "Land use permit" means a permit issued by a land use authority.
- (33) "Land use regulation":
 - (a) means a legislative decision enacted by ordinance, law, code, map, resolution, specification, fee, or rule that governs the use or development of land;
 - (b) includes the adoption or amendment of a zoning map or the text of the zoning code; and
 - (c) does not include:
 - (i) a land use decision of the legislative body acting as the land use authority, even if the decision is expressed in a resolution or ordinance; or
 - (ii) a temporary revision to an engineering specification that does not materially:
 - (A) increase a land use applicant's cost of development compared to the existing specification; or
 - (B) impact a land use applicant's use of land.
- (34) "Legislative body" means the municipal council.
- (35) "Local district" means an entity under Title 17B, Limited Purpose Local Government Entities - Local Districts, and any other governmental or quasi-governmental entity that is not a county, municipality, school district, or the state.
- (36) "Local historic district or area" means a geographically definable area that:
 - (a) contains any combination of buildings, structures, sites, objects, landscape features, archeological sites, or works of art that contribute to the historic preservation goals of a legislative body; and
 - (b) is subject to land use regulations to preserve the historic significance of the local historic district or area.
- (37) "Lot" means a tract of land, regardless of any label, that is created by and shown on a subdivision plat that has been recorded in the office of the county recorder.
- (38)
 - (a) "Lot line adjustment" means a relocation of a lot line boundary between adjoining lots or between a lot and adjoining parcels in accordance with Section 10-9a-608:
 - (i) whether or not the lots are located in the same subdivision; and
 - (ii) with the consent of the owners of record.
 - (b) "Lot line adjustment" does not mean a new boundary line that:
 - (i) creates an additional lot; or
 - (ii) constitutes a subdivision.
 - (c) "Lot line adjustment" does not include a boundary line adjustment made by the Department of Transportation.
- (39) "Major transit investment corridor" means public transit service that uses or occupies:

- (a) public transit rail right-of-way;
- (b) dedicated road right-of-way for the use of public transit, such as bus rapid transit; or
- (c) fixed-route bus corridors subject to an interlocal agreement or contract between a municipality or county and:
 - (i) a public transit district as defined in Section 17B-2a-802; or
 - (ii) an eligible political subdivision as defined in Section 59-12-2219.
- (40) "Moderate income housing" means housing occupied or reserved for occupancy by households with a gross household income equal to or less than 80% of the median gross income for households of the same size in the county in which the city is located.
- (41) "Municipal utility easement" means an easement that:
 - (a) is created or depicted on a plat recorded in a county recorder's office and is described as a municipal utility easement granted for public use;
 - (b) is not a protected utility easement or a public utility easement as defined in Section 54-3-27;
 - (c) the municipality or the municipality's affiliated governmental entity uses and occupies to provide a utility service, including sanitary sewer, culinary water, electrical, storm water, or communications or data lines;
 - (d) is used or occupied with the consent of the municipality in accordance with an authorized franchise or other agreement;
 - (e)
 - (i) is used or occupied by a specified public utility in accordance with an authorized franchise or other agreement; and
 - (ii) is located in a utility easement granted for public use; or
 - (f) is described in Section 10-9a-529 and is used by a specified public utility.
- (42) "Nominal fee" means a fee that reasonably reimburses a municipality only for time spent and expenses incurred in:
 - (a) verifying that building plans are identical plans; and
 - (b) reviewing and approving those minor aspects of identical plans that differ from the previously reviewed and approved building plans.
- (43) "Noncomplying structure" means a structure that:
 - (a) legally existed before the structure's current land use designation; and
 - (b) because of one or more subsequent land use ordinance changes, does not conform to the setback, height restrictions, or other regulations, excluding those regulations, which govern the use of land.
- (44) "Nonconforming use" means a use of land that:
 - (a) legally existed before its current land use designation;
 - (b) has been maintained continuously since the time the land use ordinance governing the land changed; and
 - (c) because of one or more subsequent land use ordinance changes, does not conform to the regulations that now govern the use of the land.
- (45) "Official map" means a map drawn by municipal authorities and recorded in a county recorder's office that:
 - (a) shows actual and proposed rights-of-way, centerline alignments, and setbacks for highways and other transportation facilities;

- (b) provides a basis for restricting development in designated rights-of-way or between designated setbacks to allow the government authorities time to purchase or otherwise reserve the land; and
- (c) has been adopted as an element of the municipality's general plan.
- (46) "Parcel" means any real property that is not a lot.
- (47)
 - (a) "Parcel boundary adjustment" means a recorded agreement between owners of adjoining parcels adjusting the mutual boundary, either by deed or by a boundary line agreement in accordance with Section 10-9a-524, if no additional parcel is created and:
 - (i) none of the property identified in the agreement is a lot; or
 - (ii) the adjustment is to the boundaries of a single person's parcels.
 - (b) "Parcel boundary adjustment" does not mean an adjustment of a parcel boundary line that:
 - (i) creates an additional parcel; or
 - (ii) constitutes a subdivision.
 - (c) "Parcel boundary adjustment" does not include a boundary line adjustment made by the Department of Transportation.
- (48) "Person" means an individual, corporation, partnership, organization, association, trust, governmental agency, or any other legal entity.
- (49) "Plan for moderate income housing" means a written document adopted by a municipality's legislative body that includes:
 - (a) an estimate of the existing supply of moderate income housing located within the municipality;
 - (b) an estimate of the need for moderate income housing in the municipality for the next five years;
 - (c) a survey of total residential land use;
 - (d) an evaluation of how existing land uses and zones affect opportunities for moderate income housing; and
 - (e) a description of the municipality's program to encourage an adequate supply of moderate income housing.
- (50) "Plat" means an instrument subdividing property into lots as depicted on a map or other graphical representation of lands that a licensed professional land surveyor makes and prepares in accordance with Section 10-9a-603 or 57-8-13.
- (51) "Potential geologic hazard area" means an area that:
 - (a) is designated by a Utah Geological Survey map, county geologist map, or other relevant map or report as needing further study to determine the area's potential for geologic hazard; or
 - (b) has not been studied by the Utah Geological Survey or a county geologist but presents the potential of geologic hazard because the area has characteristics similar to those of a designated geologic hazard area.
- (52) "Public agency" means:
 - (a) the federal government;
 - (b) the state;
 - (c) a county, municipality, school district, local district, special service district, or other political subdivision of the state; or
 - (d) a charter school.

- (53) "Public hearing" means a hearing at which members of the public are provided a reasonable opportunity to comment on the subject of the hearing.
- (54) "Public meeting" means a meeting that is required to be open to the public under Title 52, Chapter 4, Open and Public Meetings Act.
- (55) "Public street" means a public right-of-way, including a public highway, public avenue, public boulevard, public parkway, public road, public lane, public alley, public viaduct, public subway, public tunnel, public bridge, public byway, other public transportation easement, or other public way.
- (56) "Receiving zone" means an area of a municipality that the municipality designates, by ordinance, as an area in which an owner of land may receive a transferable development right.
- (57) "Record of survey map" means a map of a survey of land prepared in accordance with Section 10-9a-603, 17-23-17, 17-27a-603, or 57-8-13.
- (58) "Residential facility for persons with a disability" means a residence:
- (a) in which more than one person with a disability resides; and
 - (b)
 - (i) which is licensed or certified by the Department of Human Services under Title 62A, Chapter 2, Licensure of Programs and Facilities; or
 - (ii) which is licensed or certified by the Department of Health under Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act.
- (59) "Rules of order and procedure" means a set of rules that govern and prescribe in a public meeting:
- (a) parliamentary order and procedure;
 - (b) ethical behavior; and
 - (c) civil discourse.
- (60) "Sanitary sewer authority" means the department, agency, or public entity with responsibility to review and approve the feasibility of sanitary sewer services or onsite wastewater systems.
- (61) "Sending zone" means an area of a municipality that the municipality designates, by ordinance, as an area from which an owner of land may transfer a transferable development right.
- (62) "Specified public agency" means:
- (a) the state;
 - (b) a school district; or
 - (c) a charter school.
- (63) "Specified public utility" means an electrical corporation, gas corporation, or telephone corporation, as those terms are defined in Section 54-2-1.
- (64) "State" includes any department, division, or agency of the state.
- (65)
- (a) "Subdivision" means any land that is divided, resubdivided, or proposed to be divided into two or more lots or other division of land for the purpose, whether immediate or future, for offer, sale, lease, or development either on the installment plan or upon any and all other plans, terms, and conditions.
 - (b) "Subdivision" includes:
 - (i) the division or development of land, whether by deed, metes and bounds description, devise and testacy, map, plat, or other recorded instrument, regardless of whether the division includes all or a portion of a parcel or lot; and

(ii) except as provided in Subsection (65)(c), divisions of land for residential and nonresidential uses, including land used or to be used for commercial, agricultural, and industrial purposes.

(c) "Subdivision" does not include:

(i) a bona fide division or partition of agricultural land for the purpose of joining one of the resulting separate parcels to a contiguous parcel of unsubdivided agricultural land, if neither the resulting combined parcel nor the parcel remaining from the division or partition violates an applicable land use ordinance;

(ii) a boundary line agreement recorded with the county recorder's office between owners of adjoining parcels adjusting the mutual boundary in accordance with Section 10-9a-524 if no new parcel is created;

(iii) a recorded document, executed by the owner of record:

(A) revising the legal descriptions of multiple parcels into one legal description encompassing all such parcels; or

(B) joining a lot to a parcel;

(iv) a boundary line agreement between owners of adjoining subdivided properties adjusting the mutual lot line boundary in accordance with Sections 10-9a-524 and 10-9a-608 if:

(A) no new dwelling lot or housing unit will result from the adjustment; and

(B) the adjustment will not violate any applicable land use ordinance;

(v) a bona fide division of land by deed or other instrument if the deed or other instrument states in writing that the division:

(A) is in anticipation of future land use approvals on the parcel or parcels;

(B) does not confer any land use approvals; and

(C) has not been approved by the land use authority;

(vi) a parcel boundary adjustment;

(vii) a lot line adjustment;

(viii) a road, street, or highway dedication plat;

(ix) a deed or easement for a road, street, or highway purpose; or

(x) any other division of land authorized by law.

(66) "Subdivision amendment" means an amendment to a recorded subdivision in accordance with Section 10-9a-608 that:

(a) vacates all or a portion of the subdivision;

(b) alters the outside boundary of the subdivision;

(c) changes the number of lots within the subdivision;

(d) alters a public right-of-way, a public easement, or public infrastructure within the subdivision; or

(e) alters a common area or other common amenity within the subdivision.

(67) "Substantial evidence" means evidence that:

(a) is beyond a scintilla; and

(b) a reasonable mind would accept as adequate to support a conclusion.

(68) "Suspect soil" means soil that has:

(a) a high susceptibility for volumetric change, typically clay rich, having more than a 3% swell potential;

(b) bedrock units with high shrink or swell susceptibility; or

(c) gypsiferous silt and clay, gypsum, or bedrock units containing abundant gypsum commonly associated with dissolution and collapse features.

- (69) "Therapeutic school" means a residential group living facility:
 - (a) for four or more individuals who are not related to:
 - (i) the owner of the facility; or
 - (ii) the primary service provider of the facility;
 - (b) that serves students who have a history of failing to function:
 - (i) at home;
 - (ii) in a public school; or
 - (iii) in a nonresidential private school; and
 - (c) that offers:
 - (i) room and board; and
 - (ii) an academic education integrated with:
 - (A) specialized structure and supervision; or
 - (B) services or treatment related to a disability, an emotional development, a behavioral development, a familial development, or a social development.
- (70) "Transferable development right" means a right to develop and use land that originates by an ordinance that authorizes a land owner in a designated sending zone to transfer land use rights from a designated sending zone to a designated receiving zone.
- (71) "Unincorporated" means the area outside of the incorporated area of a city or town.
- (72) "Water interest" means any right to the beneficial use of water, including:
 - (a) each of the rights listed in Section 73-1-11; and
 - (b) an ownership interest in the right to the beneficial use of water represented by:
 - (i) a contract; or
 - (ii) a share in a water company, as defined in Section 73-3-3.5.
- (73) "Zoning map" means a map, adopted as part of a land use ordinance, that depicts land use zones, overlays, or districts.

10-9a-534. Regulation of building design elements prohibited -- Exceptions.

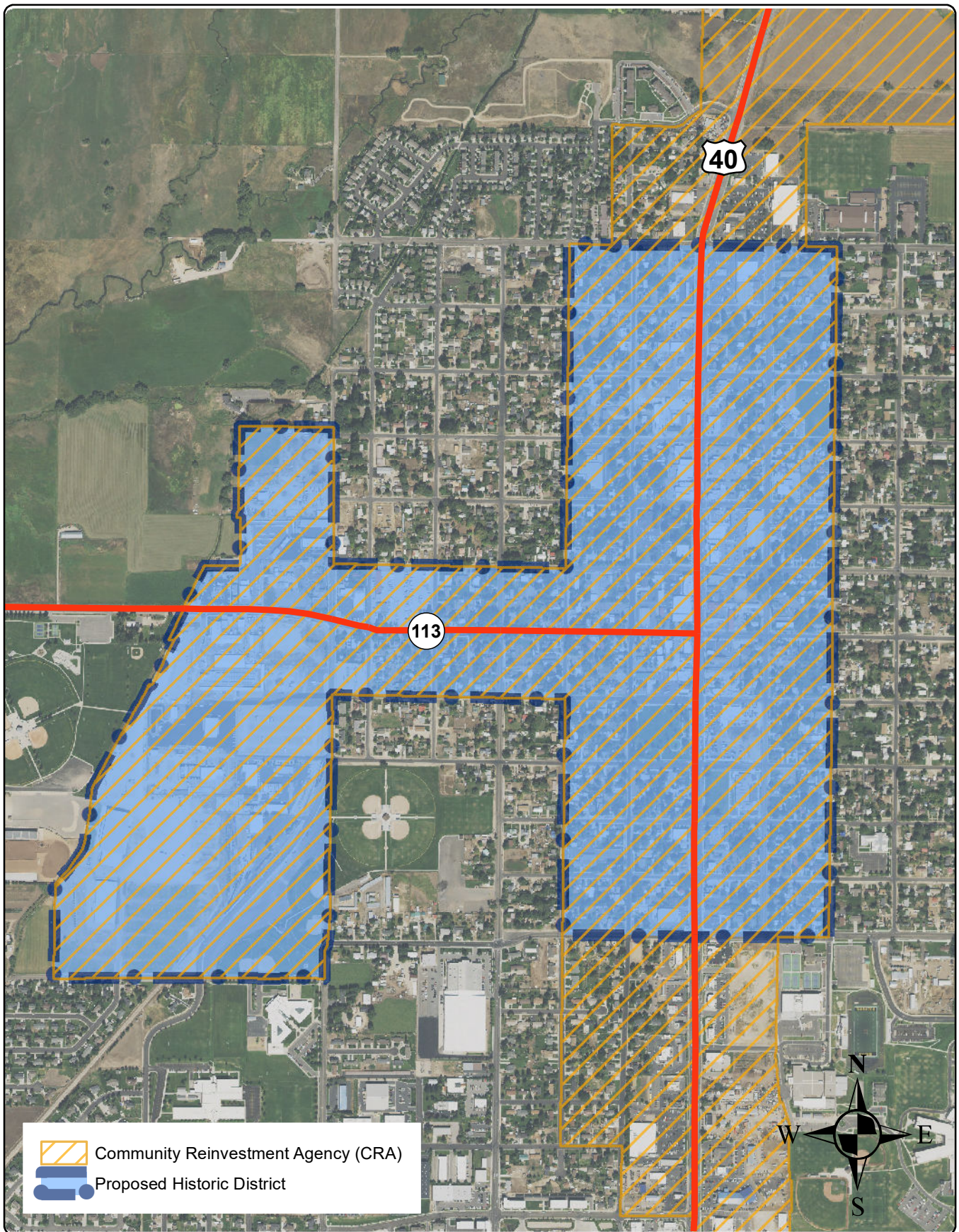
- (1) As used in this section, "building design element" means:
 - (a) exterior color;
 - (b) type or style of exterior cladding material;
 - (c) style, dimensions, or materials of a roof structure, roof pitch, or porch;
 - (d) exterior nonstructural architectural ornamentation;
 - (e) location, design, placement, or architectural styling of a window or door;
 - (f) location, design, placement, or architectural styling of a garage door, not including a rear-loading garage door;
 - (g) number or type of rooms;
 - (h) interior layout of a room;
 - (i) minimum square footage over 1,000 square feet, not including a garage;
 - (j) rear yard landscaping requirements;
 - (k) minimum building dimensions; or
 - (l) a requirement to install front yard fencing.
- (2) Except as provided in Subsection (3), a municipality may not impose a requirement for a building design element on a one to two family dwelling.
- (3) Subsection (2) does not apply to:

- (a) a dwelling located within an area designated as a historic district in:
 - (i) the National Register of Historic Places;
 - (ii) the state register as defined in Section 9-8-402; or
 - (iii) a local historic district or area, or a site designated as a local landmark, created by ordinance before January 1, 2021;
- (b) an ordinance enacted as a condition for participation in the National Flood Insurance Program administered by the Federal Emergency Management Agency;
- (c) an ordinance enacted to implement the requirements of the Utah Wildland Urban Interface Code adopted under Section 15A-2-103;
- (d) building design elements agreed to under a development agreement;
- (e) a dwelling located within an area that:
 - (i) is zoned primarily for residential use; and
 - (ii) was substantially developed before calendar year 1950;
- (f) an ordinance enacted to implement water efficient landscaping in a rear yard;
- (g) an ordinance enacted to regulate type of cladding, in response to findings or evidence from the construction industry of:
 - (i) defects in the material of existing cladding; or
 - (ii) consistent defects in the installation of existing cladding; or
- (h) a land use regulation, including a planned unit development or overlay zone, that a property owner requests:
 - (i) the municipality to apply to the owner's property; and
 - (ii) in exchange for an increase in density or other benefit not otherwise available as a permitted use in the zoning area or district.

The Historic District Map is attached, as well as applicable state code sections on historic districts.

1. Utah Code prohibits local government from placing design requirements on single family dwellings and duplex/twin homes (see Utah Code Section 10-9a-534 (2), even if it involves historic preservation. This is something to think about given that a good portion of the proposed historic district has single family dwellings that would be impacted.
2. Given the amount of attention the State Code affords historic districts within the Land Use Development and Management Act (LUDMA) (10-9a), it is clear the issue will need to appear before the Planning Commission with a public hearing, as it is a Land Use Regulation.

Section 10-9a-503 (4) of Utah Code specifies the process for the creation of historic districts. If I understand it correctly, that code section requires the concurrence of at least 33% of property owners to establish a historic district.



Draft Historic District vs CRA

February 8, 2022
Heber City, Utah