UTAH LAND USE REGULATION DESKBOOK 2016

2009 Original Version Compiled Jointly by
Utah League of Cities and Towns
The Utah Land Use Institute

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Prepared and Printed by
The Utah Land Use Institute

UTAH LAND USE REGULATION DESKBOOK

by

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About the Utah Land Use Institute

The Utah Land Use Institute is a non-profit Utah corporation established to share information about the planning and zoning process in Utah. We also seek to promote the resolution of disputes through collaborative processes.

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Forward to the 2009 Edition:

The Utah League of Cities and Towns sincerely thanks those who have provided the impulse, insight, innovation and common round manifested in this manual. This book has been three years in the making and is the result of constructive conflict and collaboration engaged in the forum of the Land Use Task Force, whose members include a number of professionals in the field of city planning, public and private land use attorneys, and representatives from the Utah Homebuilders Association and the Utah Association of Realtors, respectively.

This task force has met biweekly, during interim legislative periods since 2004, to resolve inevitable issues that arise between development interests and local regulators.

The generous financial assistance from the Utah Local Governments Trust and the Utah Association of Realtors provided the funds to print this and related documents that will be used to train countless professional and citizen planners around the state.

Forward to the 2011 Edition:

We at the Utah Land Use Institute, who were involved in preparing the first draft of this deskbook, appreciate the support of the ULCT and its executive director, Ken Bullock in allowing us to provide this updated and revised version in the new Deskbook format.

The driving force behind these materials as well as a dynamic land use education program statewide over the decade has been Jodi Hoffman, whose leadership is the undisputed catalyst for significant improvements in the land use arena. We also appreciate the diligent work of Jon Call, our law clerk, who has completed a thorough review and update of this work.

We also appreciate our board members and sponsors, as well as our partner organizations, without whose support we could not have provided these materials.

We chose a loose leaf format so that the Deskbook could be updated easily as the law evolves. This also allows you, the user of this volume, to join us in making improvements. Please contact us with your comments and suggestions.

Craig M. Call, Executive Director
The Utah Land Use Institute

Forward to the 2016 Edition:

Our task in providing this update was to review the legislation and case law relating to the Land Use, Development, and Management Act, the Government Records Access and Management Act, and the Open and Public Meetings statutes for any changes in the laws or their interpretation.

It is important to point out that the 2016 revisions were made by me personally. Those who so ably assisted in the original version and the 2011 update are not responsible for changes that I have made.

Land use law is a complicated topic. It is essential that the reviewer of these materials use the information here more to raise issues that are to be thoroughly checked with the original law and court opinions. This outline should not be considered as conclusive statements to be relied upon without further verification.

Craig M. Call, Executive Director
The Utah Land Use Institute

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Suggestions for the Use of This Resource

1. With the narratives in this Deskbook, we are attempting to simplify how one accesses the law, not to intentionally restate it. In the interest of brevity we do at times change the formats and phrasing of the wording of the statutes or case law. When the exact wording is important, refer to the law as cited in this summary and rely on the law, not the summary. For your convenience, the complete statutes are included here in the appendix, so the actual wording of the law is just inches away.

2. There are some terms we have commonly used that are no longer found in statute. For example:

Old Term	New Term
Zoning Ordinance	Land Use Ordinance
Board of Adjustment	Appeal Authority
City Council, Town Council	Legislative Body

   In order to promote the use of the newer terms, we use them throughout this guide. Other terms peculiar to land use discussions and used repeatedly in these materials include:

   Land Use Authority. The person or board that is to act on a land use application. The town or city council is always the legislative entity that acts on an application to amend the general plan, ordinance, or zoning map. A municipality may appoint one or several land use authorities to handle administrative matters – the planning commission may be appointed to act as the subdivision land use authority and one or more staff members (acting together) might be designated as the conditional use permit land use authority, for example.

   LUDMA or MLUDMA – the Municipal Land Use, Management, and Development Act found in Title 10, Chapter 9a of the Utah Code.

   Public Meeting – when a board meets and the public may be invited to speak, but is not entitled to participate.

   Public Hearing – when a board meets and the public is entitled to notice and the chance to be heard.

   For a complete list of land use definitions, see the appendix at page A-1.

3. Citations to the Utah Code are provided without the normal "Utah Code Annotated" or "U.C.A." before the section number. If the provision in the outline is formatted as 10-9a-101, the citation is to the Utah Code.

4. Citations to the decisions of Utah's two appellate courts, the Supreme Court and the Court of Appeals, are in one of three formats: A citation such as 2001 UT 25 is a citation to the 25th decision published by the Supreme Court in 2001. 2002 UT App 34 would cite the 34th decision made by the Utah Court of Appeals in 2002. Older citations are to the Pacific Reporter— Second Series. These citations are formatted such as 222 P.2d 345. These citations do not distinguish which court made the decision, so we follow that citation with more information in parentheses like this (Utah 1985) indicating that it was a Supreme Court decision decided in 1985. Older decisions by the Court of Appeals are cited as (UT App 1986).

5. We encourage reading the court opinions. All of those made by the Utah appellate courts in the past twenty years or so (since 1996-1997) are online: http://www.utcourts.gov/opinions/index.htm
6. No effort has been made to include exhaustive citation of authority. We have tried to cite all the relevant statutes but only added citations to a few court decisions where they supplement the provisions of the statutes. Less important cases have been omitted, as having limited applicability to most land use situations.
7. With few exceptions, the Land Use Development and Management Act (LUDMA) that is applicable to cities and towns— Title 10, Chapter 9a—is paralleled for county land use authorities and appeal authorities in Title 17, Chapter 27a. Comprehensive revisions to LUDMA for both cities and counties were completed under the guidance of a joint city/county task force and were intended to be interpreted consistently with each other. The code sections cited herein, for the sake of brevity, are the municipal code sections. In almost every case, a statute found in the municipal statute (10-9a) will have an identical section in the county statute (17-27a). Often the section numbers in both statutes will also be the same, or just a section numbered just before or after the municipal section numbers.
8. This deskbook was originally written in 2009 and updated in October of 2016. Later amendments to the code and more recent case law are not included. The user should be sure to check the most recent sources in order to accurately interpret the law.
9. This work is meant to provide an overview of land use law, but is not intended to constitute legal advice. For any situation where a legal conclusion is important, competent legal counsel should be consulted.
10. The opinions expressed here are those of the authors, and not of the Utah League of Cities and Towns, nor the Utah Land Use Institute.

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SECTION 1 | General Land Use Administration

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1.1 The Legal Justification of Land Use Controls and General Land Use Administration

1.1A Utah Law

Cities and towns derive their land use regulation powers and authority from the state constitution, state charters, and state statutes. Utah local governments are enabled by the Utah State Legislature with very broad powers to control land use and development. The enabling statute outlines the goals and methods of land use regulation:

> *10-9a-102. Purposes—General land use authority.* (1) The purposes of this chapter are 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 inhabitants and businesses, to protect the tax base, to secure economy in governmental expenditures, to foster the state's agricultural and other industries, to protect both urban and nonurban development, to protect and ensure access to sunlight for solar energy devices, to provide fundamental fairness in land use regulation, and to protect property values. (2) To accomplish the purposes of this chapter, municipalities may enact all ordinances, resolutions, and rules and may enter into other forms of land use controls and development agreements that they consider necessary or appropriate for the use and development of land within the municipality, including ordinances, resolutions, rules, restrictive covenants, easements, and development agreements governing uses, density, open spaces, structures, buildings, energy efficiency, light and air, air quality, transportation and public or alternative transportation, infrastructure, street and building orientation and width requirements, public facilities, fundamental fairness in land use regulation, considerations of surrounding land uses and the balance of the foregoing purposes with a landowner's private property interests, height and location of vegetation, trees, and landscaping, unless expressly prohibited by law.

However, this broad grant of power is limited by local procedures as well as both state and federal statutory and constitutional law.

In addition to powers and limitations given by the codes, legal authority for municipalities also comes as a result of action taken by the courts. Although case law includes the accumulated results of specific cases brought before the courts, individual judicial decisions can have broad impacts on municipal powers and limitations.

For example, the courts have determined that when ambiguities are found to exist in local laws, they are to be interpreted in favor of the use of property:

> "Because zoning ordinances are in derogation of the common law right to unrestricted use of one's property, provisions therein limiting the use of property should be strictly construed, and those permitting the use of property should be liberally construed in favor of the property owner." *Patterson v. Utah County Bd. of Adj*., 893 P.2d 602,606 (UT App 1995)

Since control of private property can be controversial and intrusive, there will always be challenges to the use of this power. These challenges will generally include failure to follow proper procedure, violation of state laws, violation of federal laws, or constitutional errors. Challenges to procedure may involve violations of self-imposed procedural requirements found in local ordinances as well as of state imposed requirements.

The Utah courts have consistently required a city or town to follow its own ordinances when regulating land uses, and the state code also specifically requires it:

> *10-9a-509.(2)* A municipality is bound by the terms and standards of applicable land use ordinances and shall comply with mandatory provisions of those ordinances. *See also Springville Citizens v. Springville*, 1995 UT 25.

Another set of laws that one must be concerned with are, of course, the laws of each municipality. The general plan, the land use or zoning ordinance, and the subdivision, landmarks, or other local land use ordinances constitute the basic documents that provide for and guide decisions that both land use authorities and appeal authorities are called to make.

It is essential that all land use participants understand and keep updated on all areas of land use law. We can seek advice from planning staff, the city attorney, conference training sessions, and consultants, all of which are available to assist both land use authorities and appeal authorities with interpreting and applying any part of the law.

1.1B The Planning Commission's Role

The planning commission is an essential and important part of any system of land use regulation. It is required by state law. (10-9a-401). The commission has basically two roles: First, to advise the city council (legislative body) on the most important land use issues, including enacting and amending the general plan, enacting and amending land use ordinances, and changing the zoning map, and Second, to apply and interpret the laws administratively as a land use authority.

While the planning commission does not have the final say on legislative matters, the council cannot take action without the advice of the planning commission, so each is both essential and important to the process.

In the legislative advisory role, a planning commission has the advantage of focusing on land use issues alone and does not suffer the burden of having to also deal with tax levies, city budgets, law enforcement and sewer plants. The planning commission's essential role is much narrower: to do the big-picture planning needed to make the community the kind of place all want to share in the long run.

The second role of the planning commission is administrative – it may involve applying the law as a land use authority, if appointed to do so. Each community may have one or more land use authorities, and the role of each is decided by the legislative body with the advice of the planning commission. It is not uncommon for the planning commission to be the land use authority that makes final administrative decisions regarding subdivisions, conditional use permits, site plan reviews, etc. While there is a lot to be said for delegating all but the most important or controversial administrative decisions to the staff, it is more common for the planning commission to retain much of the administrative responsibility that serving as a land use authority entails. Unfortunately, this commonly detracts from the commission's ability to keep the general plan up to date, to wisely and thoroughly anticipate needed changes in the ordinances and pursue other big-picture activities.

The institutions behind this desk book and the authors that have prepared it have long preached the advantages of delegating down the routine items associated with land use authority consideration so that proper visioning can occur. Only the planning commission can do that long-term planning, and if it is bogged down in trivia, that long-term planning will simply not occur.

The relationship between the planning commission and city council is very important, but sometimes can become strained. Continued communication and dialogue between the two entities is encouraged. Planning commissioners must remember that they only advise on the making of policy, and when acting as a land use authority, their role is to implement the policy already expressed in the ordinances. Administrative decisions are to be made based on the law, and not on personal preferences, public clamor, or politics.

Utah law is very clear that a landowner is entitled to approval of a land use application if the application complies with the city or town's ordinance 10-9a-509(1)(a).

It is also specifically stated in Utah law that a land use authority cannot impose any requirement on an applicant for a land use permit that is not specifically expressed in either state law or local ordinances 10-9a-509(1)(h) and (i).

In addition the law states that if a proposed subdivision, complies with the city or town ordinances, it must be approved 10-9a-603(2).

What all this means is that the planning commission, when acting as a land use authority, has very little discretion on whether or not to grant or deny a permit. If the landowner's application complies with the ordinances the commission must approve it, and if it does not comply then the planning commission must deny the application. This is regardless of whether or not the planning commission, or the public, thinks that the application is a good or bad idea.

The following points are some basic rules for members of a planning commission to follow. These will enhance the planning process and avoid conflict between the planning commissions, applicants, and city or town councils.

Legislative and Administrative Roles

Planning commissioners must understand and appreciate the dual role that they play. When they are making a recommendation on a general plan or on a land use ordinance they are a part of the political, *legislative* process. They have broad discretion in what their recommendation can be. They can listen to the public even if it is just uneducated clamor, and recommend policy based on what advances the goals of the state land use statutes (see above) and the general welfare.

When the planning commission is acting as a land use authority, however, it has much less discretion. It is acting in an *administrative* capacity. The landowner's application either complies with the ordinances or it does not. An individual planning commissioner's opinion of the merits of a proposed land use application is not relevant to the process. The public's comments and concerns are relevant only to the extent that they speak to issues of compliance with the existing law.

Not a Legislative Body

Planning commissioners must understand that the planning commission is intended to advise on policy – not to make policy. It is not a representative body and has no constituency. Commissioners do not represent neighborhoods and are not gate keepers. A commissioner's role is to be an expert in planning and applying the local ordinances. He or she is to make reasoned recommendations on legislative matters to the legislative body, and in the administrative context, to apply the ordinances as written.

Due Process

Planning commissioners should respect the public process and the due process rights of the applicants and the public. All meetings of the planning commission must comply with the Utah Open and Public Meetings Act. This means that both decisions and deliberations of a planning commission must be public. For more specific detail, see the sections in this desk book about open meetings and open records at section 2.12.

Public Service

Lastly, it is important to remember that being on a planning commission is about public service. One of the primary roles of a planning commission is to help the applicant accomplish with his land what the applicant desires, in a manner consistent with the city's plans and ordinances.

A planning commission fulfills its purpose when it acts in a manner supportive of the policy and policymakers. It exists to add professionalism, fairness, and common sense to the planning and land use control process.

1.2 General Plan

1.2A Generally

1. **Required.** Each municipality must 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 land within the municipality. 10-9a-401(1)

c. The municipality may determine the comprehensiveness, extent, and format of the general plan. 10-9a-401(3)

2. **Only Advisory.** The general plan is an advisory guide for land use decisions unless otherwise provided in local ordinance. 10-9a-405

3. **Public Facilities Must Conform.** No political subdivision of the state can authorize or construct a public facility that does not conform to the general plan. This includes:

   a. Streets;

   b. Parks;

   c. Public way, ground, place, or space;

   d. Publicly owned building or structure;

   e. Public utility, whether privately or publicly owned. 10-9a-406

4. **State or Federal Properties.** A municipality's general plan does not apply to state or federal buildings. 10-9a-304

1.2B Elements—Mandatory and Optional

1. **Mandatory Elements.** The plan MUST provide for:

   a. A land use element designating:

      i. Long-term goals; and

      ii. Proposed location of land for housing, business, industry, agriculture, recreation, education, public buildings and grounds, open space, and other appropriate categories; 10-9a-403(2)(a)(i)(A), and

      iii. For municipalities with agricultural protection areas, the planning commission shall:

         A. Identify and consider each agricultural protection area within the municipality; and

         B. Avoid proposing a land use within an agricultural protection area that is inconsistent with or detrimental to the use of the land for agriculture; 10-9a-403(2)(c)

   b. A transportation and traffic circulation element including:

      i. Existing and proposed freeways;

      ii. Arterial and collector streets;

      iii. Mass transit;

      iv. Other appropriate means of transportation;

      v. Correlation to population projections and proposed land uses; 10-9a-403 (2)(a)(ii), and

      vi. An optional "official map" of future street plans:

         A. Optional—no duty to adopt an official map;

         B. Official map does not:

            I. Act to require the dedication of private property for streets and roads;

            II. Act to require the municipality to acquire land for streets immediately;

            III. Prohibit the accommodation of proposed streets by development;

            IV. Prohibit the acquisition of land through purchase, gift, dedication, or eminent domain and prohibit exactions on development if not illegal under 10-9a-508; 10-9a-407

   c. For cities (municipalities with 1,000 persons or more), a moderate income housing element, which:

      i. Must:

         A. Include an estimate of the need for moderate income housing;

B. Include a plan to provide a realistic opportunity to meet estimated needs if long-term projections for land use and development occur;

C. Consider the needs of people desiring to live in the city;

D. Allow people of moderate income to benefit and fully participate in all aspects of neighborhood and community life; 10-9a-403(2)(a)

ii. May include an analysis and recommendation to:

A. Rezone for higher densities;

B. Facilitate infrastructure to encourage moderate income housing;

C. Rehabilitate existing housing stock;

D. General fund subsidies to waive construction related fees;

E. Utilize state and federal funds and tax incentives;

F. Consider programs of the Utah Housing Corporation;

G. Consider programs of the Utah Dept. of Community and Culture; 10-9a-403(2)(b)

iii. Moderate income housing element must be reviewed every two years:

A. By the municipal council;

B. With a resulting report describing:

I. Efforts made to minimize regulatory barriers;

II. Actions taken to preserve moderate income housing and develop new moderate income housing;

III. Permits issued for new units of moderate income housing;

IV. Coordination with neighboring communities;

C. Copy of report must be sent to the Utah Dept. of Community and Culture and local association of government;

D. A plaintiff may sue to enforce the need for moderate income housing but not for money damages. 10-9a-408

2. **Optional Elements.** The plan may provide for:

a. An environmental element that includes:

i. Protection, conservation, development, and use of natural resources;

ii. Reclamation of land, flood control, prevention of pollution of waters, regulation of hillsides, stream channels and sensitive areas, prevention of erosion, protection of watersheds and wetlands, and mapping of known geologic hazards;

b. A public services and facilities element showing 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. Diminution or elimination of blight;

iii. Redevelopment of land;

d. An economic element comprised of:

i. Studies and forecasts;

ii. Economic development plan;

iii. Municipal revenues and expenditures;

iv. Revenue sources;

v. Identification of market areas;

vi. Employment;

vii. Retail sales;

e. Recommendations to implement the general plan, including:

i. Land use ordinances;

ii. Capital improvement plans;

iii. Community development and promotion;

iv. Other appropriate action;

f. Provisions addressing:

i. Health, general welfare, safety, energy conservation, transportation, prosperity, civic activities, aesthetics, and recreational, educational, and cultural opportunities;

ii. Reduction of the waste of physical, financial, or human resources due to excessive congestion or sprawl;

iii. Efficient and economical use, conservation, and production of:

A. Food and water;

B. Drainage, sanitary and other facilities, and resources;

C. Energy conservation and solar and renewable energy;

iv. Protection of urban development;

v. Protection and promotion of moderate income housing;

vi. Historic preservation;

vii. Identification of future uses of land which will expand or modify services or facilities provided by affected entities;

viii. Official map (streets);

g. Projections for population densities and building intensity;

h. Any other element the municipality considers appropriate. 10-9a-403(3)

3. **Extraterritorial Planning.** The general plan may include areas outside of the municipality if the planning commission considers those areas related to planning for the municipality, but no action related to area outside the municipality may be taken without the concurrence of the county or neighboring municipality. 10-9a-403(1)(c) and (d)

4. **State Assistance.** State officials, departments, and agencies are to deliver any data and information requested by a municipality that is not protected by the Government Records Access and Management Act (GRAMA) and furnish technical assistance without cost. 10-9a-402

1.2C Adoption of the General Plan

1. **Planning Commission.** Procedure for adoption:

a. Must conduct hearing before completing its recommendation for the general plan or an amendment to the general plan;

b. Ten days notice required prior to the first public *hearing* to consider general plan or modifications in all municipalities:

i. Publish in newspaper; and

ii. Mail to affected entities; and

iii. Post in three physical locations or on the website; and

iv. Post on the Utah Public Meeting Notice website at pmn.utah.gov. 10-9a-204(2)

c. After public hearing, may modify the proposed plan or amendment to the plan. 10-9a-404(1)(c)

2. **Legislative Body.** Procedure for adoption:

a. The legislative body must hold a public hearing to adopt or amend a general plan; 10-9a-404(1)(a)

b. The legislative body may make any revisions to the proposed plan after receiving the

recommendation of the planning commission; 10-9a-404(3)

c. May adopt as proposed, adopt with revisions, or send back to the planning commission; 10-9a-404(4)

d. If the plan is sent back to the planning commission, the council may make suggestions; 10-9a-404(4)(b)

e. The legislative body must adopt:

i. A land use element; 10-9a-404(5)(a), 10-9a-403(2)(a)(i)

ii. A transportation and traffic circulation element; 10-9a-404(5)(b),10-9a-403(2)(a)(ii)

iii. Cities (population 1,000 or more) must adopt 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. 10-9a-404(5)(c), 10-9a-403(2)(b)(ii).

1.3 Enacting Land Use Ordinances

1.3A Generally

1. **Optional.** Each municipality may enact land use ordinances and a zoning map for:

a. Present and future needs of municipality;

b. Growth and development of all or any part of land within the municipality. 10-9a-501

2. **Allowed Ordinances.** Allowed land use ordinances:

a. A municipality may enact any ordinance that does not violate the constitution or a statute and promotes the purposes of LUDMA as outlined in 10-9a-102:

i. To provide for the health, safety, and welfare, promote the prosperity, improve the morals, peace and good order, comfort, convenience, and aesthetics of each municipality and its present and future inhabitants and businesses;

ii. To protect the tax base;

iii. To secure economy in governmental expenditures;

iv. To foster the state's agricultural and other industries;

v. To protect both urban and nonurban development;

vi. To protect and ensure access to sunlight for solar energy devices;

vii. To provide fundamental fairness in land use regulation; and

viii. To protect property values; 10-9a-102(1), See also 10-9a-801(3)(b)

b. Ordinances may govern uses, density, open spaces, structures, buildings, energy efficiency, light and air, air quality, transportation and public or alternative transportation, infrastructure, street and building orientation and width requirements, public facilities, fundamental fairness in land use regulation, considerations of surrounding land uses and the balance of the foregoing purposes with a landowner's private property interests, height and location of vegetation, trees, and landscaping, unless expressly prohibited by law; 10-9a-102(2)

c. May divide municipal area into districts; 10-9a-505(1)(a)

d. May regulate erection, construction, reconstruction, alteration, repair, or use of buildings and structures, and the use of land; 10-9a-505(1)(b)

e. May enact an ordinance dealing with geological hazards and flood plains; 10-9-505(1)(c)

f. May set zoning districts without regard to the size of the district or the number of landowners in the district ("spot zoning" is generally not a valid reason to challenge a Utah land use decision); 10-9a-505(3)

g. May provide for conditional uses; 10-a9-507 (See sections 2.2 and 4.5 on conditional uses.)

h. Ordinances specifically allowed by the courts requiring landlords to live in one unit of a rental property; *Anderson v. Provo,* 2005 UT 5

i. An ordinance that does not provide for geographical segregation is not a land use ordinance. *Ogden City v. Edwards*, 2004 UT App 468, ¶ 3.

3. **Prohibited Ordinances.** Prohibited types of land use ordinances:

   a. Generally, ordinances exercising power not within the municipality's police powers are illegal; *Marshall v. SLC,* 141 P.2d 704 (Utah 1943)

   b. An ordinance may not impose regulations that are not uniform for each class or kind of buildings in each zoning district, but regulations in one zone may differ from those in other zones; 10-9a-505(2)

   c. An ordinance may not require the consent of third parties to allow land uses. *Smith v. Barrett,* 20 P.2d 864 (Utah 1933)

1.3B Adoption of Ordinances

1. **Mandatory Procedures:** A municipality must conform to mandatory procedures in adopting or amending an ordinance or the ordinance or amendment adopted is invalid. *Hatch v. Boulder Town,*¶ 9 2001 UT App 55 (referencing U.C.A. 10-9a-402, renumbered to 10-9a-502)

2. **Planning Commission.** Adoption or amendment of land use ordinance—planning commission:

   a. Planning commission must first consider any land use ordinance or amendment and make a recommendation to the council; 10-9a-502(1)(c), 10-9a-503(2)

   b. The planning commission must hold a public *hearing* prior to taking a vote to make a recommendation. A public meeting is not a public hearing—the public attends a public *meeting* and may be allowed to speak, but the public is entitled to notice of and a chance to speak at a public *hearing*; 10-9a-502(1)(b)

   c. Ten calendar days notice required prior to the public hearing before the planning commission to adopt or modify a land use ordinance:

      i. Mail to affected entities; and

      ii. Post in three physical locations, or on the municipality's website; and

      iii. Publish in a newspaper, or mail to each property owner whose land is directly affected by the land use ordinance change and adjacent property owners within a distance specified by local ordinance; and

      iv. Post on the Utah Public Meeting Notice website. 10-9a-205(2)

   d. **Mandatory Notice to Property Owners.** In a recent legislative change, LUDMA now requires that amendments to the zoning map cannot be made without first providing ten days advance notice of a hearing to each property owner with land entirely or partially within the proposed map. The notice must:

      i. Identify the property owners; and

      ii. State the current and proposed zone; and

      iii. Inform about or provide reference information relating to the new restrictions that the property will be subject to if the map amendment is adopted; and

iv. Advise how to file a written objection; and Provide the location, date and time of the hearing. 10-9a-205(4); 10-9a-502

3. **Legislative Body.** Only the municipal council may adopt a land use ordinance or amendment: 10-9a-502(2), 503

   a. Only after receiving the recommendation of the planning commission; 10-9a-503(2)

   b. Exception: temporary land use ordinances (moratoria); 10-9a-504

   c. Need not hold a public hearing, but must only take action in a public meeting; 10-9a-502(2)

   d. Must provide 24-hour notice before holding a public meeting—post in three physical locations or on the website and on the Utah Public Meeting Notice website. 10-9a-205(1)(b)

   e. Council may adopt the planning commission's recommendation, reject it and deny the proposed ordinance or amendment, or make an amendment to the recommendation. 10-9a-502(2); *Gardner v. Perry City,* 2000 UT App 1

1.3C Temporary Land Use Regulation

1. **Moratorium.** A temporary land use regulation (TLUR):

   a. Can be adopted without planning commission recommendation;

   b. Only if the area is unregulated before the TLUR or after council has made a finding of a compelling, countervailing public interest;

   c. May prohibit or regulate the erection, construction, reconstruction, or alteration of any building or structure or any subdivision approval;

   d. May not impose an impact fee;

   e. Must state an effective time period not to exceed six months;

   f. May be enacted to prohibit development activities in a proposed transportation corridor:

      i. May be renewed for up to three periods of six months each;

      ii. Only allowed if an environmental or investment study is in progress;

      iii. May not extend past the date that an environmental or investment study is completed. 10-9a-504

1.3D Ordinances for Newly Annexed Land

1. **Zoning of newly annexed land:**

   a. Council should assign annexed property to zoning district(s) at the time of annexation;

   b. If not assigned to a zoning district, the land uses shall be compatible with the surrounding land uses within the municipality. 10-9a-506

1.4 Planning Commission

1. **Required.** Each municipality shall, by ordinance, create a planning commission and define:

   a. The number and term of members and, if desired, alternate members;

   b. The mode of appointment;

   c. Procedures for filling vacancies and removals;

   d. Authority of the planning commission;

   e. Other details related to organization and procedures;

   f. Per diem compensation, if desired, for reasonable expenses and actual meetings attended. 10-9a-301

2. **Duties.** The planning commission shall recommend:

   a. A general plan and amendments to the general plan;

   b. Land use ordinances, zoning maps, official maps (for streets) and amendments to these;

c. Appointment of a land use authority for each type of land use application to be considered. There may be more than one land use authority appointed;

d. Appropriate delegation of power to at least one appeal authority to hear an appeal from each land use authority;

e. Application processes that:

i. May allow an optional streamlined review of routine land use matters;

ii. Protect the right of each applicant and third party to require consideration of any application by a land use authority;

iii. Provide for an appeal process to a separate appeal authority;

iv. Allow a participant to be heard in a public hearing on a contested application. 10-9a-302

3. **Ordinances.** Adoption or amendment of land use ordinance—role of the planning commission:

a. Planning commission must first consider any land use ordinance or amendment and make a recommendation to the council; 10-9a-502(c), 10-9a-503(2)

b. The planning commission must hold a public hearing prior to taking a vote to make a recommendation to the legislative body; 10-9a-502

c. Ten calendar day notice required prior to the public hearing before the planning commission to adopt or modify a land use ordinance:

i. Mail to affected entities; and

ii. Post in three physical locations, or on the website; and

iii. Publish in newspaper, or mail to each property owner whose land is directly affected by the land use ordinance change and adjacent property owners within a distance specified by local ordinance; and

iv. Post on the Utah Public Meeting Notice website 10-9a-205(2), 10-9a-502; or

v. mail to directly affected landowners and adjacent landowners within parameters established by local ordinance. 10-9a-205(2)(c)(ii)(B)

1.5 Review of Land Use Applications

1. **Vested Rights.** An applicant is entitled to approval of a land use application if:

a. The application is complete and conformed to the land use regulations, including specifications for public improvements in place:

i. On the date it was submitted;

ii. In a manner that complies with requirements of applicable ordinances;

iii. And all applicable fees were paid; 10-9a-509(1)(a)

iv. So long as the applicant proceeds after approval to implement the approval with reasonable diligence; 10-9a-509(1)(g)

b. *Unless* a "pending ordinance" was being formally considered:

i. In the manner provided by local ordinance;

ii. Before the application was submitted;

iii. That would prohibit approval of the application as submitted; 10-9a-509 (1)(a)(ii)

iv. Except that the municipality cannot consider a pending ordinance for more than 180 days without enacting it in a form that prohibits the application as submitted; 10-9a-509(1)(e) *Or unless* the land use authority finds, on the record, that a compelling, countervailing public interest would be jeopardized by approval of the

application as submitted, 10-9a-509(1)(a)(i) or the property involved in the application is located within a high-priority transit corridor and the procedure outlined in 10-9a-509(1)(b) to notify the Department of Transportation has not been completed. 10-9a-509

c. The applicable

2. **Complete Application.** Each municipality shall, in a timely manner, determine whether an application is complete for the purposes of subsequent, substantive land use authority review:

   a. After a reasonable period of time to allow the municipality diligently to evaluate whether all objective ordinance-based application criteria have been met, if application fees have been paid, the applicant may in writing request that the municipality provide a written determination either that the application is:

      i. Complete for the purposes of allowing subsequent, substantive land use authority review; or

      ii. Deficient with respect to a specific, objective, ordinance-based application requirement;

   b. Within 30 days of receipt of an applicant's request under this section, the municipality shall either:

      i. Mail a written notice to the applicant advising that the application is deficient with respect to a specified, objective, ordinance-based criterion, and stating that the application must be supplemented by specific additional information identified in the notice; or

      ii. Accept the application as complete for the purposes of further substantive processing by the land use authority;

   c. If the notice is not timely mailed, the application shall be considered complete, for purposes of further substantive land use authority review;

   d. The applicant may raise and resolve in a single appeal any determination made under this provision to the appeal authority, including an allegation that a reasonable period of time has elapsed for the municipality to determine if the application is complete;

      i. The appeal authority shall issue a written decision;

      ii. The applicant may appeal to district court the decision of the appeal authority within 30 days of the date of the written decision. 10-9a-509.5(1)

3. Timely Review. Each land use authority shall substantively review an application considered complete under Section 10-9a-509.5(1)(d), and shall approve or deny each application with reasonable diligence. After a reasonable period of time to allow the land use authority to consider an application, the applicant may in writing request that the land use authority take final action within 45 days from date of service of the written request:

   a. The land use authority shall take final action, approving or denying the application within 45 days of the written request;

   b. If the land use authority denies the application within 45 days or if the applicant has requested a written decision in the application, the land use authority shall include its reasons for denial in writing, on the record, which may include the official minutes of the meeting in which the decision was rendered;

   c. If the land use authority fails to take final action within 45 days, the applicant may appeal this failure to district court within 30 days of the date on which the land use authority should have taken final action. 10-9a-509.5(2)

4. **Must Comply with Ordinances.** There is nothing in the provisions of LUDMA and no action or inaction of the land use authority relieves an applicant's duty to comply with all applicable substantive ordinances and regulations. 10-9a-509.5(4)

5. **No Money Damages.** There shall be no money damages remedy arising from a claim related to timely review. 10-9a-509.5(5)

1.6 Notice Requirements

1.6A Generally

1. **Notice Requirements are Minimums.** Local ordinances can require greater notice, but not less. 10-9a-201

2. **Thirty Days to Challenge.** Notice must be challenged within 30 days of the meeting or action. If not so challenged, the notice which was given is considered adequate and proper. 10-9a-209

3. **Actual Notice.** A person attending a hearing and participating cannot challenge that he or she did not receive proper notice or the hearing. *Naylor v. Salt Lake City Corp.,* 410 P.2d 764,766 (Utah 1966)

4. **Faulty Notice Result—Voidable Action.** If notice is properly challenged, the action taken is void. If a zoning ordinance is void, the community's land is not zoned and property owner can proceed without regulation. *Carter v. City of Salina,* 773 F.2d 251 (10th Cir. 1985); *Hatch v. Boulder Town,* 2001 UT App 55, ¶ 12-14

5. **Every Public Meeting.** Twenty-four hour notice required prior to a public *meeting* to consider land use matters:

    a. Publish in a newspaper; and

    b. Post in three public locations or on the municipalities website; 10-9a-204(3), 52-4-202(1)

    c. Post agenda for all public meetings on the Utah Public Meeting Notice website. 52-4-202(3)(b)

6. **Notice to Applicant.** Required notice to the applicant:

    a. Notify of each date, time, place of hearing and public meeting to consider the application;

    b. Provide copy of staff report three days before a meeting or hearing;

    c. Notify the applicant of final action taken;

    d. Applicant can waive these requirements. 10-9a-202

7. **Notice to Neighbors (Optional).** If a municipality requires notice to adjacent property owners:

    a. Mail notice to record owner of each parcel within the defined distance (whether in the municipality or not); or

    b. Post notice on the property that provides reasonable notice to passers-by. 10-9a-206

1.6B Notice of General Plan Amendments

1. **Notice—Wasatch Front.** Ten days notice required prior to considering general plan or comprehensive plan amendments for a municipality located in Salt Lake, Weber, Davis, or Utah Counties (counties with a population of more than 175,000):

    a. Provide notice to:

        i. Any affected entity (see definitions at 10-9a-103(1));

        ii. Utah Automated Geographic Reference Center;

        iii. Local Association of Government;

        iv. Utah Public Notice Website (required for municipalities with greater than 1 million budget) optional for other municipalities;

        v. State planning coordinator; if no posting is made on the Public Notice Website. 10-9a-203(1)

    b. Notice to include:

        i. Intent to create or amend general plan;

ii. Map of affected area;

iii. Send notice via mail, email, or effective means;

iv. Invitation to those receiving notice to provide information;

v. Address of website;

vi. Individual to contact for more information. 10-9a-203(2)

2. **Public Hearings.** Ten calendar days notice required prior to the first public hearing to consider general plan or modifications in all municipalities:

   a. Publish in newspaper; and

   b. Mail to affected entities (see definitions); and

   c. Post in three physical locations or on the website; and

   d. Post on the Utah Public Meeting Notice website. 10-9a-204 (2)

3. **Public Meetings.** Twenty-four hour notice required prior to a public meeting to consider general plan or modifications:

   a. Publish in a newspaper; and

   b. Posted in three public locations or on the municipal website; and

   c. Post on the Utah Public Meeting Notice website. 10-9a-204(3)

1.6C Notice of Land Use Ordinance and Zoning Map Changes

1. **Public Hearings.** Ten calendar days notice required prior to a public *hearing* to adopt or modify a land use ordinance:

   a. Mail to "affected entities" (see definitions); and

   b. Post in three physical locations or on the municipal website; and

   c. Publish in newspaper or mail to each property owner whose land is directly affected by the land use ordinance change and adjacent property owners within a distance specified by local ordinance; and

   d. Post on the Utah Public Meeting Notice website. 10-9a-205(2)

   e. **Mandatory Notice to Property Owners.** In a recent legislative change, LUDMA now requires that amendments to the zoning map cannot be made without first providing ten days advance notice of a hearing to each property owner with land entirely or partially within the proposed map. The notice must:

      i. Identify the property owners; and

      ii. State the current and proposed zone; and

      iii. Inform about or provide reference information relating to the new restrictions that the property will be subject to if the map amendment is adopted; and

      iv. Advise how to file a written objection; and Provide the location, date and time of the hearing. 10-9a-205(4); 10-9a-502.

2. **Public Meetings.** Twenty-four hour notice required prior to a public meeting to adopt or modify a land use ordinance. Post in three physical locations or on the municipal website, and use Utah Public Meeting Notice website. 10-9a-205(3)

1.6D Notice - Subdivisions

1. **Public Hearings.** A public hearing is generally not required prior to the approval of a subdivision unless the subdivision requires the vacation, alteration or amendment of a street or if:

   a. A petition is filed to request a change in a plat; and

   b. Any owner within the plat notifies the municipality of their objection in writing within ten days of mailed notification; or

   c. All of the owners in the subdivision have not signed the revised plat. 10-9a-608(1)(b).

A public hearing is not required if:

a. The amendment proposed is to join two lots together when the owner/applicant owns both lots;

b. a lot is being subdivided and the subdivision complies with the zoning code;

c. the petition seeks to adjust lot lines which all owners join in the petition;

d. the amendment alters an internal lot restriction imposed by the municipality

e. the amendment does not alter other lots in the subdivision which are not owned by the petitioner or designated common areas;

f. And appropriate notice according to local ordinance is given of the public meeting where the petition is to be considered. 10-9a-608(3)

If a hearing is required, it shall be held:

a. Within 45 days of the petition; or

b. Within 45 days of receiving the planning commission's recommendation if the planning commission is not the land use authority designated to act on subdivisions. 10-9a-608(1)(b)

2. **Public Meeting.** At least one public meeting is required to be held for the amendment of a subdivision if the land use authority is a body and not an individual. Notice required:

   a. Ten days notice:

      i. mailed and addressed to the record owner of each parcel within specified parameters of that property; or

      ii. posted on the property proposed for subdivision, in a visible location, with a sign of sufficient size, durability, and print quality that is reasonably calculated to give notice to passers-by.

   b. Subdivisions which require the vacation alteration or amendment of a street are subject to a public hearing under 10-9a-208. See next section 1.6E Public Streets.

3. **Other Notice of Subdivision Amendments**. Notice of a plat amendment must be provided to any "affected entity" that provides a service to an owner of record of the portion of the plat which is being vacated or amended at least 10 business days before the approval. 10-9a-608.

1.6E Notice – Changes in Public Streets

1. **Public Hearing.** Notice required prior to a public *hearing* to vacate, alter, or amend a public street or right-of-way:

   a. Ten days notice:

      i. Mail notice to the record owner of each parcel that is accessed by the public street, right-of-way, or easement

      ii. Mailed to each "affected entity"(see definitions);

   iii. Post on or near the street, right-of-way, or easement in a manner that is calculated to alert the public; and

   iv. Publish in a newspaper of general circulation in the municipality in which the land subject to the petition is located; and

   v. Publish on the Utah Public Notice Website 10-9a-208.

1.6F Notice – Changes in Specifications for Public Improvements

Prior to implementing an amendment to adopted specifications for public improvements that apply to subdivision or development, a municipality shall give 30 days mailed notice and an opportunity to comment to anyone who has requested the notice in writing. 10-9a-212

1.6G Notice – Pending Civil Penalty.

A municipality may not impose a civil penalty under a land use regulation until written notice has been provided to the address of the owner of record of the property involved or the person designated by the property owner as agent to receive such notice. The owner must have a reasonable opportunity to cure the noticed violation and understand beforehand the penalties that will be imposed by a time certain. 10-9a-803

1.6H Public Hearings - Generally

1. **General Plan.** A public hearing is required prior to adoption of, or amendment to, the general plan:
    a. The *planning commission* must conduct a public hearing before completing its recommendation to adopt or amend the general plan;
    b. Ten calendar days notice required prior to the first public *hearing* to consider the general plan or modifications in all municipalities:
        i. Publish in newspaper; and
        ii. Mail to affected entities (see definitions - generally, other taxing districts and public utilities); and
        iii. Post in three physical locations, or
        iv. Post on the municipal website; and
        v. Post on the Utah Public Meeting Notice website. 10-9a-204(2)
2. **Ordinances.** A public hearing is required prior to adoption of or amendment to land use ordinances, including changes to the zoning map:
    a. The *planning commission* must conduct a public hearing on a proposed land use ordinance or map and on any amendment to the land use ordinance or map;
    b. State law requires a minimum of ten calendar days notice prior to a public *hearing* to adopt or modify a land use ordinance:
        i. Mail to affected entities (generally, other taxing districts and public utilities); and
        ii. Post in three physical locations or on the municipal website
        iii. Publish in newspaper or mail to each property owner whose land is directly affected by the land use ordinance change and adjacent property owners within a distance specified by local ordinance; and
        iv. Post on the Utah Public Meeting Notice website. 10-9a-205(2)
    c. **Mandatory Notice to Property Owners.** In a recent legislative change, LUDMA now requires that amendments to the zoning map cannot be made without first providing ten days advance notice of a hearing to each property owner with land entirely or partially within the proposed map. The notice must:
        i. Identify the property owners; and
        ii. State the current and proposed zone; and
        iii. Inform about or provide reference information relating to the new restrictions that the property will be subject to if the map amendment is adopted; and
        iv. Advise how to file a written objection; and Provide the location, date and time of the hearing. 10-9a-205(4); 10-9a-502.
    d. The *legislative body* need only conduct a public meeting on a proposed land use ordinance or map and on any amendment to the land use ordinance or map. A hearing before the legislative body on these matters is optional unless required by local ordinance. 10-9a-502(2)

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SECTION 2 | Additional Land Use Topics

2.1 Billboards

1. **Termination.** Billboards are terminated with the permission of the billboard owner by:
    a. Gift;
    b. Purchase;
    c. Agreement; or
    d. Exchange. 10-9a-512(1) and (2)
2. **Eminent Domain.** Billboards may also be terminated through the use of eminent domain. 10-9a-512(1)(e) Eminent domain is assumed to be initiated by the municipality if it prevents the billboard owner from:
    a. Rebuilding, maintaining, repairing, or restoring a billboard structure that is damaged by casualty, an act of God, or vandalism; or
    b. Relocating or rebuilding a billboard if:
        i. Erected or placed by mistake; and
        ii. The municipality issued a permit for the billboard; and
        iii. The proposed relocation or rebuilding is consistent with the intent of the permit. 10-9a-512(1)(e) and 513(2) (a)(i) and (ii)
3. **Removal.** A municipality may remove a billboard without paying compensation if:
    a. There is clear and convincing evidence that the applicant for the billboard permit intentionally made a false or misleading statement:
        i. In the application for the permit;
        ii. Regarding the placement or erection of the billboard; 10-9a-513(2)(d)(i) or
    b. There is substantial evidence that the billboard:
        i. Is structurally unsafe;
        ii. Is in an unreasonable state of repair; or
        iii. Has been abandoned for at least 12 months. 10-9a-513(3)(a)
4. **Procedure.** Before removing the billboard:
    a. The municipality must notify the owner in writing that the billboard is eligible for removal; and
    b. Allow the owner to remedy the condition or conditions:
        i. Within ten business days if the billboard is structurally unsafe; or
        ii. For a longer period if the unsafe condition is the result of a natural disaster; or
        iii. Within 90 days if on the other grounds allowing removal; 10-9a-513(3)(b) and (c)
    c. Conduct a proceeding:
        i. After providing reasonable notice; and
        ii. Allowing the owner a hearing; and
        iii. Determining by clear and convincing evidence that the applicant for a permit made a false or misleading statement; or
        iv. Determining by substantial evidence that the billboard is:
            A. Structurally unsafe;
            B. In an unreasonable state of repair; or
            C. Has been abandoned for at least 12 months. 10-9a-513(3)(d)
5. **Nonconforming Billboard—Replacement.** The municipality may not allow anyone other than the owner to rebuild or replace a nonconforming billboard. 10-9a-513(4)
6. **Permits—Term.** A permit for a billboard issued by a municipality remains valid for 180 days after a required state permit is issued if:
    a. A state permit is required for the billboard; and

b. An application for the state permit is applied for within 30 days after the municipality issues, extends, or renews a permit for the billboard. 10-9a-513(5)

7. Compensation. Just compensation for billboard acquisition is:

a. The value of the existing billboard at a fair market capitalization rate, less rent expenses

b. The value of any other rights associated with the billboard

c. The cost of the sign structure

d. The damage to the economic unit define in 72-7-510(3)(b) as "the remaining properties, contiguous and noncontiguous, of an outdoor advertising sign company's interest, which remaining properties, together with the properties actually condemned, constituted an economic unit."

2.2 Conditional Uses

1. **Optional.** A municipality may allow for conditional uses by ordinance. 10-9a-507(1)

2. **Standards.** If conditional uses are allowed, the ordinance must require compliance with standards set forth in the ordinance. A conditional use permit application may not be denied unless the denial or condition is based on standards in the ordinance. 10-9a-507(2)(a); *Uintah Mtn. RTC v. Duchesne County,* 2005 UT App 565, ¶ 21.

3. **Review.** Conditional uses shall be approved if:

   a. Reasonable conditions can be imposed to mitigate the reasonably anticipated detrimental effects of the proposed use;

   b. In accordance with applicable standards. 10-9a-507(2)(a)

   c. A decision related to a conditional use must be based on substantial evidence in the record. It cannot be based on "vague reservations" expressed by members of the land use authority or members of the public. Public clamor cannot be the basis for a decision related to a conditional use application. *Davis County v. Clearfield,* 756 P.2d 704, 711-712 (Utah 1988); *Wadsworth v. West Jordan,* 2000 UT App 49, ¶ 17-18.

4. **Denial.** Conditional uses may be denied only if the reasonably anticipated detrimental effects of the proposed use cannot be substantially mitigated by reasonable conditions imposed in accordance with applicable standards. 10-9a-507(2)(b)

5. **Expiration.** A conditional use permit is extinguished if the conditions are not met before conditions change so that the approved use cannot be effected. *Keith v. Mountain Resorts Dev.* 2014 UT 32.

2.3 Disabled Residents

1. A municipality may only regulate a residential facility for persons with a disability to the extent allowed by:

   a. The Utah Fair Housing Act 57-21; 10-9a-516(1).

   b. The Federal Fair Housing Act of 1988, 42 U.S.C. 3601 et. seq.; 10-9a-516(2).

   c. Section 504 of the Rehabilitation Act of 1973. 10-9a-516(3).

2.4 Exactions

1. **Definition.** Exactions are conditions imposed by governmental entities on applicants for the issuance of a building permit, subdivision plat approval, or other land use application. *Salt Lake County v. Bd. of Educ. of Granite Sch. Dist.,* 808 P.2d 1056, 1058 (Utah 1991)

   a. Exactions may take the form of:

      i. Mandatory dedication of land for roads, schools, or parks as a condition to plat approval;

      ii. Fees-in-lieu of mandatory dedication;

iii. Water or sewage connection fees;

iv. Impact fees; *B.A.M. Dev., L.L.C., v. Salt Lake County,* 2006 UT 2, ¶ 34.

v. In-kind exactions; *B.A.M. Dev., L.L.C., v. Salt Lake County,* 2004 UT App 34, ¶ 14.

b. An "exaction" may be legal or illegal. The term "exaction" may be used for both appropriate and inappropriate conditions imposed on development. *Dolan v. City of Tigard*, 512 US 374 (1994): *Nolan v. California Coastal Commission*, 483 US 825.

2. **Allowed.** A municipality may impose exactions. 10-9a-508

3. **Necessary Formality.** Since a land use application is entitled to approval if it complies with the relevant ordinances, an application cannot be denied if an exaction is refused unless that exaction is authorized by an ordinance or building standard adopted by ordinance. 10-9a-509(1)

4. **Valid Purpose.** An exaction may only be imposed if the exaction involves a legitimate use of municipal power. 10-9a-508(1)

5. **Related to Project Burdens.** Each exaction can only be imposed in response to some burden created by the development. 10-9a-508(1)(b); *B.A.M. Dev., L.L.C., v. Salt Lake County,* 2008 UT 45, ¶13

6. **Burden on the Municipality.** The burden that is to be offset by exactions imposed by a municipality must be a burden that the municipality would otherwise bear. A municipality may only impose and exaction for another governmental entity if that other entity requests it and the exaction is transferred to that entity. 10-9a-508(2).

7. **Equivalence.** The burden created by the exaction must be roughly equivalent to the burden created by the development. 10-9a-508(1)(b) In other words, the cost to the applicant to comply with exactions imposed on the development must be roughly equivalent to the cost that the public would bear if the burdens created by the development absent the exactions. *B.A.M. Dev. L.L.C. v. Salt Lake County,* 2008 UT 45 par 13

8. **Resale of Property.** A municipality may not dispose of property acquired through an exaction within fifteen years of receiving the property without first offering to reconvey the property back to the person who conveyed it to the municipality as provided for in 10-9a-508(3).

2.5 Fees—Plan Check and Development or Development Review Fees

There are a myriad of fees and charges that cities may impose in the development review process. Each jurisdiction may have a different name, or slightly different connotation, for a fee depending on the emphasis of review in the jurisdiction on new development.

Development fees include: permit application fees in each service area (planning, building, utility service, engineering, etc.), inspection fees (building, utilities, subdivision infrastructure, and exaction construction), hook up or connection fees, impact fees, etc. Regardless of the name of the fee, one must keep in mind that all fees are justified *only* on a "cost recovery" basis. Upon request, each fee must be itemized for the fee payer to allow the fee payer to determine if the fee was properly calculated.

Some jurisdictions charge fees "in lieu" of exactions. However, jurisdictions must be cautious that a fee in lieu of an exaction is not:

1. An illegal impact fee in that it is a charge for infrastructure cost recovery that is not allowed under the Impact Fees Act; 11-36a-202

2. A fee sought to evade the statutory process for enacting impact fees; or 11-36a-204

3. A fee that violates the constitutional standards for exactions (1) than there is an essential nexus between the impact of the development and some city services and (2) that the fee imposed on the

applicant is roughly equivalent to the cost that the development imposes on the municipality. *Dolan v. City of Tigard*, 512 US 374 (1994): *Nolan v. California Coastal Commission,* 483 US 825.

The legislature has addressed building permit fees by adopting the International Building Code (IBC) fee structure and by prohibiting the IBC fee on essentially identical plans. For example, in a subdivision with 200 homes, but only ten varieties of home plans, the jurisdiction may charge ten separate IBC building plan review fees for the 200 homes, with only a nominal charge to confirm that the remaining 190 plans mirror one of the ten model plans. 10-9a-510(2)

The legislature has further limited a building's "plan review" fees from other city departments to "the lesser of" the actual cost of review or 65% of the building permit fee. 10-9a-510(1)

The remaining development or development review fees must not exceed cost recovery (direct and indirect) for the service. One concern has been that there may be a redundancy or repetitiveness of development review processes, leading to excessive fee charges. The legislature has authorized and encouraged a streamlining of planning processes that should lead to a reduction in the cost of development. 10-9a-510(4)

1. **Plan Review.** A municipality may not impose or collect a fee for reviewing or approving the plans for a commercial or residential building that exceeds the lesser of:
    a. The actual cost of performing the review;
    b. Sixty-five percent of the amount the municipality charges for a building permit fee for that building. 10-9a-510(1)
2. **Identical Plans.** A municipality may only impose a nominal fee for reviewing and approving identical plans. 10-9a-510(2)
3. **Schools.** A municipality may not impose land use fees upon a school district or charter school. *Bd. of Educ. of Jordan Sch. Dist. v. Sandy City Corp.,* 2004 UT 37; 10-9a-305(3)(c) A municipality may not impose inspection fees upon a school district or charter school, unless the school district is unable to provide inspections by a qualified inspector other than the architect or contractor. 10-9a-305(4)(d)

2.6 Geological Hazards

1. **Optional.** A municipality may enact an ordinance regulating land use and development in a flood plain or potential geological hazard area to protect life and prevent the substantial loss or damage to real property. 10-9a-505(1)(c)
2. **Geological Hazard.** A "geological hazard" is:
    a. A surface fault rupture;
    b. Shallow ground water;
    c. Liquefaction;
    d. A landslide;
    e. A debris flow;
    f. Unstable soil;
    g. A rock fall; or
    h. Any other geological condition that presents a risk:
        i. To life;
        ii. Of substantial loss of real property; or
        iii. Of substantial damage to real property. 10-9a-103(14)
3. **Flood Plain.** A "flood plain" is land that is within the 100-year flood plain designated by the Federal Emergency Management Agency (FEMA); or has not been studied or designated by FEMA 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 FEMA. 10-9a-103(12)
4. **Appeals of Geological Issues.** The applicant, a board or officer of the municipality, or any person adversely affected by the land use authority's

decision administering or interpreting a geological hazard ordinance may, within the time period provided by ordinance, appeal that decision to the appeal authority by alleging that there is error in any order, requirement, decision, or determination made by the land use authority in the administration or interpretation of the land use ordinance:

a. The person making an appeal may request the municipality to assemble a panel of qualified experts to serve as the appeal authority for purposes of determining the technical aspects of the appeal;

b. The municipality shall assemble the panel consisting of, unless otherwise agreed by the applicant and municipality:

   i. One expert designated by the municipality;

   ii. One expert designated by the applicant; and

   iii. One expert chosen jointly by the municipality's designated expert and the applicant's designated expert;

   iv. A member of the panel assembled by the municipality may not be associated with the application that is the subject of the appeal;

c. The applicant shall pay half of the cost of the panel and the municipality's published appeal fee. 10-9a-703(2)

2.7 Historic Districts

1. **Definition:** "Local historic district or area" means a geographically or thematically definable area that 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. 10-9a-503(4)(a)(ii)
2. **Initiated by Residents**. The state statute's restrictions on historic districts only apply to the situation where a local ordinance allows the residents to officially initiate the process of creating an historic district. It does not restrict the local legislative body's ability to create an historic district. 10-9a-503(4)(b)
3. Initiation. More than thirty three percent must propose an historic district in writing. 10-9a-503(4)(b)
4. Informational Pamphlet. The municipality must prepare a neutral informational pamphlet that outlines the process of creating a local historic district and lists the pros and cons. 10-9a-503(4)(b)(ii)
5. **Balloting.** One ballot is to be provided to the owners of each parcel of property or condominium unit within the proposed historic district. They are to vote yes or no on the district. In order for the district to be created, 2/3 of the ballots representing more than 50% of the individual parcels and condominium units must support the district. If the owners' vote fails, the legislative body may override the vote of the property owners with a 2/3 quorum of the legislative body. 10-9a-503(4)(b) and (c).
6. **Renewed Effort.** If the proposed district fails, a resident may not initiate another proposal for an area that includes more than 50% of the area which was the subject of the failed proposal for four years. 10-9a-503(4)(b)

2.8 Manufactured Homes

1. **Definition:** "Manufactured home" means a transportable factory built housing unit constructed on or after June 15, 1976, according to the Department of Housing and Urban Development (HUD) Code, in one or more sections, which:

   a. In the traveling mode, is eight body feet or more in width or 40 body feet or more in length, or when erected on site, is 400 or more square feet; and

   b. Is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the

required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems; 15A-1-302(6); and

c. Is attached to a permanent foundation in accordance with plans providing for vertical loads, uplift, and lateral forces and frost protection in compliance with applicable building codes. 10-9a-514(1)

2. **Building Codes.** All appendages, including carports, garages, storage buildings, additions or alterations must be built in compliance with the applicable building code. 10-9a-514(1)

3. **Entitlement.** A manufactured home must be allowed in any zone where a residence would be permitted, provided that the manufactured home complies with all local land use ordinances, building codes, and any restrictive covenants applicable to a single family residence in that zone. 10-9a-514(2)

4. **Equivalent to Other Homes.** A municipality may not:

   a. Adopt an ordinance that treats a proposed development that includes manufactured homes any differently than one that does not; or

   b. Reject a development plan based on the fact that it is expected to contain manufactured homes. 10-9a-514(3)

5. **Age.** Since a manufactured home built before 1976 does not qualify under the definition of the type of homes that must be allowed under this provision of LUDMA, homes of that age may be prohibited from being moved into any community that enacts an ordinance to that effect. 10-9a-514(1); 15A-1-302(6)

2.9 Nonconforming Uses and Noncomplying Structures

1. **Structure.** "Noncomplying structure" means a structure that:

   a. Legally existed before its 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. 10-9a-103(32)

2. **Use.** "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. 10-9a-103(33)

3. **Vested Rights.** Uses and structures may be continued, except as provided by 10-9a-511 of LUDMA. The present or a future property owner may continue the use or structure. 10-9a-511(1)(a)

4. **Regulations.** Local ordinances may regulate these aspects of nonconforming uses:

   a. Establishment;

   b. Restoration;

   c. Reconstruction;

   d. Extension;

   e. Alteration;

   f. Expansion;

   g. Substitution;

   h. Termination through amortization: 10-9a-511(2)(a)

      i. Must provide a formula;

      ii. Formula must allow the owner to recover his investment;

      iii. Over a reasonable time;

iv. May not terminate billboards through amortization;

i. Termination through abandonment. 10-9a-511(2)

j. A municipality may not require physical changes to install an egress or emergency escape window in an existing bedroom if

(1) it complied with the state construction code in place when the bedroom was finished;

(2) the dwelling is owner-occupied, a detached 1-4 family dwelling, or a townhome and the window in the existing bedroom is smaller than required by the current codes; and

(3) the change would compromise the structural integrity of the structure or could not be completed in accordance with current building code, including set-back and window well requirements.

Municipalities may regulate the style of window that is allowed in a bedroom; require that an existing window be openable; and require that the existing window not be reduced in size.

5. **Extension Throughout Structure.** A nonconforming use may be extended through the same building unless the extension involves a structural alteration. 10-9a-511(1)(b)

6. **Casualty.** The right to continue a nonconforming use or structure is not terminated by fire or other calamity:

a. That destroys a structure in whole or part;

b. Unless intentionally destroyed; or

c. Unless abandoned. 10-9a-511(3)(a); *Rock Manor Trust v. State Road Comm.,* 550 P.2d 205 (Utah 1976)

7. **Deterioration.** If the structure involved is allowed to deteriorate and rendered uninhabitable, the nonconforming use or noncomplying structure status may be terminated by the municipality if:

a. The structure is not restored within six months;

b. After written notice;

c. To the property owner;

d. That the structure is uninhabitable; and

e. That the nonconforming use or noncomplying structure status will be lost;

f. If not repaired or restored within six months. 10-9a-511(3)(b)(i)

8. **Demolition.** A nonconforming structure, or nonconforming use of a nonconforming structure, can be terminated if the owner has voluntarily demolished more than 50% of the non conforming structure or the building that houses the nonconforming use. 10-9a-511(3)(b)(ii)

9. **Burden.** The property owner has the burden of establishing legal existence unless the municipality has enacted an ordinance allowing a presumption of existence. Once established, the person claiming abandonment has the burden to prove abandonment. 10-9a-511(4)(a) and (b)

10. **Abandonment.** Abandonment of a nonconforming use may be presumed if:

a. A majority of the primary structure associated with the use has been voluntarily demolished without written prior agreement with the municipality to extend the use; or

b. The use has been discontinued for a minimum of a year; or

c. The primary structure associated with the use remains vacant for a year; 10-9a-511(4)(c)

d. A presumption of abandonment under 511(4)(c) may be rebutted by the owner who shall bear the burden of establishing that abandonment has not occurred; 10-9a-511(4)(d)

e. If the abandonment occurs because of the passage of time, one year minimum, even if the cessation of the use is involuntarily, the use is

terminated, based upon local ordinance. 10-9a-511(4)(c)(ii); *Rogers v. West Valley City,* 2006 UT App 302 (WVC statute said that after discontinuance of one year the use "shall" be considered abandoned)

11. **Schools.** A municipality may terminate a school use or structure if:
    a. The property or structure is abandoned for a period established by local ordinance; and
    b. The school is operated by a school district or charter school. 10-9a-511(5)

2.10 Schools and Land Use Regulations

1. **Exceptions to Regulation.** School districts, charter schools, counties, special district, and other political subdivisions of the state must conform to municipal land use ordinances (10-9a-305(1)) except that a municipality may not impose requirements for:
    a. Landscaping, fencing, aesthetics, construction methods or materials, building codes, building uses for educational purposes, or temporary classrooms; 10-9a-305(4)(a)
    b. Sidewalks or roadways:
        i. Not reasonably necessary for the safety of schoolchildren; and
        ii. Not on or contiguous to school property;
        iii. Unless required to connect an isolated school site to an existing roadway; 10-9a-305(4)(b)
    c. Any land use application fees; 10-9a-305(4)(c) *Bd. of Educ. of Jordan Sch. Dist. v. Sandy City Corp.,* 2004 UT 37
    d. Inspections of school construction or fees for inspection unless the school is unable to provide for inspections; 10-9a-305(4)(d)
    e. Impact fees not related to the specific impact of a school project; 10-9a-305(4)(e)
    f. Location of schools, except where there are unreasonable risks to health or safety: 10-9a-305(4)(f)
        i. A charter school is a permitted use in any zone;
        ii. Charter school land use applications are to be processed as first priorities;
        iii. Parking requirements for charter schools may not exceed those for other schools or institutions;
        iv. Charter schools may waive the setback distances from sexually oriented businesses and businesses which sell alcohol. 10-9a-305(8)
2. **Inspections.** Specific inspection regulations apply to school construction. 10-9a-305(6) and (7).
3. **School Sites.** School districts and charter schools shall coordinate the site of a school with the municipality to:
    a. Avoid traffic hazards;
    b. Consider impacts between the new school and future highways;
    c. Maximize school, student, and site safety. 10-9a-305(5)
4. **Land Use Fees.** A municipality may not impose land use fees upon a school district or charter school. *Bd. of Educ. of Jordan Sch. Dist. v. Sandy City Corp.,* 2004 UT 37; 10-9a-305(4)(c)
5. **Inspection Fees.** A municipality may not impose inspection fees upon a school district or charter school, unless the school district is unable to provide inspections by a qualified inspector other than by the architect or contractor. 10-9a-305(4)(d)
6. **Nonconformities.** A municipality may terminate a school use or structure of a school district or charter school if:
    a. The use is nonconforming; or

b. The structure is noncomplying; and

c. The use or structure is abandoned for a period established by local ordinance; and 10-9a-511(5)

7. **Notification of Intent to Purchase or Construct.**

a. Notification to local government of intent to purchase school site or construction of school building:

i. A school district or charter school must notify the affected local governmental entity without delay prior to the purchase of a school site or construction of a school building of its intent to purchase or construct;

ii. Representatives of the local governmental entity and the school district or charter school must meet as soon as possible after delivery of the notice to:

A. Discuss concerns that each may have, including potential community impacts and site safety;

B. Assess the availability of infrastructure for the site; and

C. Discuss any fees that might be charged by the local governmental entity in connection with a building project. 53A-20-108(1)

b. Representatives of the local governmental entity and the school district or charter school must meet as soon as possible after the purchase of a school site to discuss concerns that each may have, including potential community impacts, and to negotiate any fees that might be charged by the local governmental entity in connection with a building project. 53A-20-108(2)

c. A local governmental entity may not increase a previously agreed-upon fee after the district or charter school has signed contracts to begin construction. 53A-20-108(3)

d. Prior to the filing of a formal application by the affected school district or charter school, a local governmental entity may not disclose information obtained from a school district or charter school regarding the district's or charter school's consideration of, or intent to, purchase a school site or construct a school building, without first obtaining the consent of the district or charter school. 53A-20-108(4)

2.11 Streets and Roads

2.11A Dedication

1. **Dedication.** Plats, when made, acknowledged, and recorded according to subdivision procedures, operate as a dedication of all streets and other public places, and vest the fee of those parcels of land in the municipality for the public for the uses named or intended in those plats. 10-9a-607(1)

2. **Liability.** The dedication established by this section does not impose liability upon the municipality for streets and other public places that are dedicated in this manner but are unimproved. 10-9a-607(2)

2.11B Vacation and Abandonment

1. **Private Easements.** While a municipality may vacate or narrow a street or alley that has been dedicated to public use, doing so does not impair the rights of way or easements of any utilities or property owners with private easements. 10-9a-609.5(3)

2. **Public Hearing.** Notice required prior to a public *hearing* to vacate, alter, or amend a public street or right-of-way:

a. Ten days notice:

i. Mail notice to the record owner of each parcel that is accessed by the public street, right-of-way, or easement; and

ii. Mailed to each affected entity; and

iii. Post a notice on street, easement, right-of-way, in a way to alert the public; and

iv. Publish notice once a week in newspaper; and

v. Post notice on the Utah Public Meeting Notice website. (State website not required if municipality's annual budget is less than $1 million.) 10-9a-208, 52-4-202(3)(b)

2.12 Subdivisions

2.12A Generally

1. **Definition:** "Subdivision" means any land that is divided, re-subdivided or proposed to be divided into two or more lots, parcels, sites, units, plots, 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: 10-9a-103(53)(a)

   a. "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; and

      ii. Except as provided below, divisions of land for residential and nonresidential uses, including land used or to be used for commercial, agricultural, and industrial purposes; 10-9a-103(53)(b)

   b. "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; 10-9a-103(53).

      ii. A recorded agreement between owners of adjoining unsubdivided properties adjusting their mutual boundary if no additional parcel of property is created. This may be accomplished without the review of the land use authority by means of a quit claim deed or a boundary line agreement. 10-9a-103(35); 10-9a-523.

      iii. A recorded document, executed by the owner of record:

         A. Revising the legal description of more than one contiguous unsubdivided parcel of property into one legal description encompassing all such parcels of property; or

         B. Joining a subdivided parcel of property to another parcel of property that has not been subdivided, if the joinder does not violate applicable land use ordinances; or

      iv. A recorded agreement between owners of adjoining subdivided properties adjusting their mutual boundary 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; 10-9a-103(53)(c)

   c. The joining of a subdivided parcel of property to another parcel of property that has not been subdivided does not constitute a subdivision as to the unsubdivided parcel of property or subject the unsubdivided parcel to the municipality's subdivision ordinance. 10-9a-103(53)(d)

2. **Planning Commission.** The planning commission shall:

   a. Prepare and recommend a proposed subdivision ordinance;

   b. Prepare and recommend, or consider and recommend, amendments to the subdivision ordinance;

c. Give ten calendar days notice:

i. Mail to affected entities; and

ii. Post in three physical locations, or on the municipal website; and

iii. Publish in newspaper and post on the Utah Public Notice Website; or mail to each property owner whose land is directly affected by the land use ordinance change and adjacent property owners within a distance specified by local ordinance;

d. Hold a public hearing on the proposed ordinance before making a recommendation to the council. 10-9a-602(1) referencing 10-9a-205 for notice requirements

3. **Legislative Body Action.** The council may adopt or reject the ordinance as proposed by the Planning Comission or make any revision the council deems appropriate. 10-9a-602(2)

4. **Land Use Authority.** With the recommendation of the planning commission, the council may designate a land use authority to review and act upon subdivision applications. The land use authority may be the planning commission, the council, a member of the staff, or another person as designated. 10-9a-302(3)

5. **No Ordinance.** If a municipality does not adopt a subdivision ordinance, it may only regulate subdivisions to the extent provided for in the subdivision statute found in LUDMA at part 6. 10-9a-601(2)

6. **Entitlement.** The municipality shall approve a subdivision application:

a. If the plat conforms to LUDMA part 6 and the municipality's ordinances; and

b. Has been approved by the water authority and the sewer authority; 10-9a-603(2)

c. Approval of a plat may be withheld:

i. Until the owner provides a tax clearance indicating that all taxes, interest, and penalties owed on the land have been paid; 10-9a-603(3)

ii. If deed restrictions, covenants, or similar binding agreements running with the land for the lots or parcels prohibit reasonably sited and designed solar collectors, clotheslines, or other energy devices based on renewable resources. 10-9a-610

7. **Requirements Must be in the Ordinances.** A municipality may not impose on an applicant who has submitted a complete application for preliminary subdivision approval a requirement that is not expressed in the state LUDMA, a municipal ordinance; or a municipal specification for public improvements applicable to a subdivision or development that is in effect on the date that the applicant submits an application. 10-9a-509.

8. **Common Areas.** Common areas must be owned by associations, not individuals, and:

a. May not be conveyed separately from the privately owned parcels created by the plat; unless the property is acquired by a municipality for a governmental purpose and 75% of the lot owners approve.

b. Shall be assessed for tax purposes as owned equally by all the privately owned parcels on the plat unless otherwise indicated on the plat or an accompanying recorded document;

c. Shall be considered to be included in the legal description for each parcel on the plat when the parcel is referred to by its parcel number. 10-9a-606

d. A common area can be reduced in size if the owners of 75% of the lots or 75% of the HOA members approve, there is a formal plat amendment, and no new building lot is created. No plat amendment is required if the reduction is a lot line adjustment. 10-9a-606

9. **Recording and Selling Lots.**

   a. A municipality may require compliance with a subdivision ordinance before:

      i. Filing a plat with the county recorder; and

      ii. Selling subdivision lots. 10-9a-601(1)

   b. The transfer or sale of any land in a subdivision before a plat of the subdivision has been approved and recorded:

      i. Violates the subdivision part of LUDMA for each lot or parcel transferred or sold, whether sold by lots or by a metes and bounds legal description;

      ii. Does not affect the validity of the instrument or other document; and

      iii. Does not affect whether the property that is the subject of the instrument or other document complies with applicable ordinances on land use and development;

   c. A municipality may bring an action against an owner who transfers or sells land in a subdivision before a plat of the subdivision has been approved and recorded to:

      i. Require the property to conform to the subdivision part of LUDMA or a local subdivision ordinance;

      ii. Seek relief through abatement, merger of title, or any other appropriate action or proceeding to prevent, enjoin, or abate the violation;

      iii. Seek an injunction, which shall be obtained if the municipality establishes the violation. 10-9a-611

   d. The owner of any land in a subdivision that transfers or sells any land before the plat has been approved and recorded is guilty of an infraction. 10-9a-611

2.12B Plat Approval Process

1. If the plat approval process includes the approval of a preliminary plat, and if there is no provision requiring the extension of a preliminary plat approval before it lapses, the plat approval may be extended after it lapses. *Suarez v. Grand County*, 2012 UT 72
2. The mandatory provisions of an ordinance that govern the form of a preliminary plat application, if not met, do not preclude the approval of the preliminary plat. Absent specific code requirements to the contrary, the land use authority may grant conditional approval subject to identified flaws being corrected prior to final plat approval. Moab Green Local Party v. Moab City, 2012 UT App 113

2.12C Form of Plats

1. **Plat Required.** A plat is required for a subdivision: 10-9a-603(1)

   a. Except that: the land use authority may approve a subdivision of ten lots or less without a plat, by certifying in writing that:

      i. Notice was given as required by ordinance; and

      ii. The proposed subdivision:

         A. Is not traversed by a proposed street; and

         B. Requires no dedication of land for a street; and

         C. Has been approved by the culinary water authority and the sewer authority; and

         D. Is located in a zoned area; and

         E. Conforms to the land use ordinances or has properly received a variance from the land use ordinance; 10-9a-605(1)

   b. Except that: A lot or parcel resulting from a division of agricultural land is exempt from filing a plat if the land:

i. Is in agricultural use, which according to 52-2-502(4) means devoted to the raising of useful plants and animals with a reasonable expectation of profit, including:

A. Forages and sod crops;

B. Grains and feed crops;

C. Livestock;

D. Trees and fruits; or

E. Vegetables, nursery, floral, and ornamental stock; or

F. Land devoted to and meeting the requirements and qualifications for payments or other compensation under a crop-land retirement program with an agency of the state or federal government;

i. Meets the minimum size requirement of the local land use ordinance; and

ii. Is not used and will not be used for any nonagricultural purpose; 10-9a-605(2)(a)

iii. If a lot or parcel exempted from the plat requirement involves any use other than agricultural use, the municipality may require the lot or parcel to comply with the plat requirements. 10-9a-605(2)(c)

2. **Small Subdivisions—Survey Map.** If a subdivision is exempt from the plat requirements because the number of lots is ten or less, the boundaries of each lot or parcel shall be graphically illustrated in a record of survey map:

a. The survey may must still be approved as provided for a plat; and

b. Filed with the county recorder. 10-9a-605(2)(c)

3. **Metes and Bounds Subdivisions.** A document that is recorded which divides land by metes and bounds descriptions of subdivided parcels does not create an approved subdivision unless a certificate or written approval from the land use authority is attached to the document, but:

a. The lack of the certificate or written approval does not affect the validity of a recorded document; and

b. Approved subdivision status can be achieved later by recording an affidavit with an attached certificate or written approval from the land use authority. 10-9a-605(3)

4. **Form of Plat.** A plat must include:

a. A distinct name distinct from other subdivisions in the county;

b. The boundaries, course, and dimension of all parcels divided;

c. Designation of any land to be used as a street or other public use and whether that land is to be reserved or proposed for dedication for a public purpose;

d. The unit or lot reference, block or building reference, street or site address, street name and coordinate address, acreage or square footage of parcels, units, or lots, and length and width of blocks and lots intended for sale;

e. Every existing right-of-way and easement grant of record for underground facilities and for other utility facilities. See definition of underground facilities in 54-8a-2; 10-9a-603(1)

f. The landowner shall acknowledge the plat before a notary and shall obtain the signature of each person designated by the municipality; 10-9a-603(4)(a)

g. A surveyor shall certify that he or she:

i. Holds a license as a professional engineer or surveyor; and

ii. Has completed a survey complying with 17-23-17 and verified all measurements; and

iii. Has placed monuments as represented in the plat. 10-9a-603(4)(b)

h. To the extent possible, the surveyor shall consult with the owner or operator of an existing or proposed underground facility or utility facility within the proposed subdivision, or a representative designated by the owner or operator, to verify the accuracy of the surveyor's depiction of the:

a. Boundary, course, dimensions, and intended use of the public rights-of-way, a public or private easement, or grants of record; and

b. Location of an existing underground utility and utility facility; and

c. Physical restrictions governing the location of the underground facility and utility facility within the subdivision. 10-9a-603(4)(c)

5. **Approval of Plats by Third Parties**. A municipality may only require that a plat be approved or signed by a person or entity who:

a. Is an employee or agent of the municipality,

b. Has an interest in the property involved,

c. Provides utility or other service,

d. Owns an easement (accuracy of the location of the easement only), or

e. Provides culinary water service and has a source protection zone within the proposed subdivision area. 10-9a-603(2)

f. If a canal company or operator is entitled to receive notice of a subdivision, that company or operator may be required to sign the plat for the sole purpose of determining the accuracy of data depicted on the plat. 10-9a-509(1)(b)(iv); 10-9a-603(2)(c)(iii).

6. **Effect of Cooperation.** The cooperation of an owner or operator of an underground facility or utility facility in the surveyor's preparation of the plat:

a. Indicates only that the plat approximates the location of the existing underground and utility facilities but does not warrant or verify their precise location; and

b. Does not affect a right that the owner or operator has under:

i. Title 54, Chapter 8a, Damage to Underground Utility Facilities;

ii. A recorded easement or right-of-way;

iii. The law applicable to prescriptive rights; or

iv. Any other provision of law. 10-9a-603(4)(c)(ii).

2.12D Recording the Subdivision Plat

1. **Delay in Recording.** If the municipality designates a time period during which the plat must be recorded, the plat will be voidable if not recorded within that time period. 10-9a-603(5)

2. **Prior to Recording.** A person may not submit a plat for recording unless:

a. The planning commission has made a recommendation;

b. The plat has been approved by:

i. The land use authority designated by the council, upon the recommendation of the planning commission, to act upon subdivision applications; or

ii. Other officers that the council designates by ordinance;

c. All approvals have been entered in writing on the plat; 10-9a-604(1)

d. A person may submit a plat without meeting the requirements in this item if the planning commission is the land use authority that reviews and acts on subdivision applications, and all officers designated by ordinance have given written approvals on the plat. 10-9a-604(1)(b) and (c)

3. **Lack of Signatures.** A plat recorded without the signatures required is void and has no legal effect. 10-9a-604(2)
4. **Void Plat.** A transfer of land pursuant to a void plat is voidable, and may be cancelled by some affirmative action by the person choosing to do so. 10-9a-604(3)
5. **Streets and Public Places.** Recording a plat acts to convey ownership in the land occupied by the streets and public places shown on the plat to the municipality for the purposes shown on the plat, but does not impose liability upon the municipality for the streets and public places if they are unimproved. 10-9a-607

2.12E Vacating or Changing a Plat

1. **Process.** A fee owner of land in a platted subdivision may petition to have the plat amended or vacated. 10-9a-608(1).
2. **Who Can File.** A written petition to vacate, alter, or amend a plat or portion of a subdivision plat or any street within the subdivision can be filed by any fee owner of a lot in the subdivision. 10-9a-608(1), 10-9a-609.5
3. **Form of Petition.** A petition to vacate, alter, or amend a subdivision plat shall include:
    a. The name and address of all owners of record of land within the entire plat; and
    b. The name and address of all owners of record of land adjacent to any street to be vacated, altered, or amended; and
    c. The signature of each of these owners who consent to the petition. 10-9a-608(4), 10-9a-609.5(1)
4. **Surveyor.** An amended plat shall include a certification by the surveyor, who shall certify that he or she:
    a. Holds a license as a professional engineer or surveyor; and
    b. Has completed a survey complying with 17-23-17 and verified all measurements; and
    c. Has placed monuments as represented in the plat. 10-9a-608(6)(b)
5. **Public Hearing.** A public hearing before the land use authority is *only* required if:
    a. A petition is filed to request a change in a plat; and
    b. Any owner within the plat notifies the municipality of their objection in writing within ten days of mailed notification; or
    c. All of the owners in the subdivision have not signed the revised plat. 10-9a-608(1)(b).

    A public hearing is not required if:
    a. The amendment proposed is to join two lots together when the owner/applicant owns both lots;
    b. a lot is being subdivided and the subdivision complies with the zoning code;
    c. the petition seeks to adjust lot lines which all owners join in the petition;
    d. the amendment alters an internal lot restriction imposed by the municipality
    e. the amendment does not alter other lots in the subdivision which are not owned by the petitioner or designated common areas;
    f. And appropriate notice according to local ordinance is given of the public meeting where the petition is to be considered. 10-9a-608(3)

    If a hearing is required, it shall be held:
    a. Within 45 days of the petition; or
    b. Within 45 days of receiving the planning commission's recommendation if the planning

commission is not the land use authority designated to act on subdivisions. 10-9a-608(1)(b)

6. **Findings Required.** If the land use authority designated to act on subdivisions is satisfied that:

   a. There is good cause to amend or vacate; and

   b. No public street or right of way, or street, or easement has been amended or vacated. 10-9a-609(1)

7. **Procedure.** The land use authority approves the vacation, alteration, or amendment to the plat by:

   a. Signing an amended plat; 10-9a-609(1)

   b. Making sure that the amended plat is recorded at the county recorder's office; 10-9a-609(2)

   c. If an plat is wholly or partially vacated, the council must record an ordinance describing the subdivision or portion to be vacated. 10-9a-609(3)

   d. An amended plat may not be recorded unless signed, acknowledged, and dedicated by each record owner of the subdivision or the management committee according to Title 57, Chapter 8. 10-9a-609(4) and (5)

   e. Vacated or Amended Plat. A vacated or amended plat vacates, supersedes, and replaces the previous plat. The amended plat must be signed by the land use authority. 10-9a-609.

8. **Boundary Adjustments.** The owners of adjacent parcels may exchange title to portions of those parcels or enter into a boundary line agreement by recording a quitclaim deed or boundary line adjustment with the county recorder and need not receive approval of a land use authority to do so.

   This provision does not apply to land within a subdivision lot, but does apply to remainder parcels of subdivided land. 10-9a-103(35); 10-9a-523, 524

9. **Amended Name.** The name of a subdivision may be amended by recording an amended plat, so long as the name is not the same as another plat recorded at the county recorder's office. 10-9a-608(6)(a) and (c)

10. **Streets.** Vacation or alteration of any street or alley within a subdivision:

    a. The legislative body shall provide Ten days notice:

       i. Mail notice to the record owner of each parcel that is accessed by the public street, right-of-way, or easement

       ii. mailed to each affected entity;

       iii. posted on or near the street, right-of-way, or easement in a manner that is calculated to alert the public; and
       iv. published in a newspaper of general circulation in the municipality in which the land subject to the petition is located; and
       v. published on the Utah Public Notice Website created in Section (State website not required if municipality's annual budget is less than $1 million.) 10-9a-208, 52-4-202(3)(b)

    b. The petition to amend or vacate a street, right-of-way, or easement shall include:

       i. the names and addresses of all property owners which are adjacent to the proposed street, right-of-way, or easement; or are accessed by such within 300 feet; and

       ii. the signatures of each owner who consent to the vacation

    c. The legislative body shall determine:

       i. if good cause exists; and

       ii. if the public interest or any person will be materially affected by the vacation.

    d. The legislative body shall ensure that either a plat or ordinance or both is recorded with the county.

e. The legislative action relinquishes the municipalities fee ownership in the vacated property but can't affect:

i. the right-of-way, or easement of any landowner; or

ii. the franchise rights of any public utility. 10-9a-609.5

2.12F Subdivision Improvements

1. **Required Formality.** A municipality may not impose requirements on the holder of an approved subdivision plat that are not expressed:

a. In the subdivision plat; or

b. In documents upon which the subdivision plat is based; or

c. in the written record of the meeting approving the plat; or

d. In LUDMA; or

e. In the municipality's ordinances. 10-9a-509(1)(h)

2. **Completion of Improvements.**

a. A land use authority may allow a land use applicant to proceed with subdivision plat recording, or development activity, before completing improvements required as a condition precedent to subdivision plat recording, or development activity, if:

i. The land use authority requires an improvement assurance that provides for:

A. An improvement assurance warranty for a period of up to one year after final acceptance of the improvement or warranty work; or

B. two years after final acceptance of the improvement or warranty work, if the municipality:

I. Determines for good cause that a lesser period would be inadequate to protect the public health, safety, and welfare; and

II. Has substantial evidence of prior poor performance of the applicant; unstable soil conditions within the subdivision or development area; or extreme fluctuations in climatic conditions that would render impracticable the discovery of substandard or defective performance within a one-year period; and

III. A partial release of the improvement assurance, if appropriate; and

IV. The land use authority establishes objective inspection standards for final acceptance of the required improvements. 10-9a-604.5

b. A municipality may not require the completion of landscaping or infrastructure prior to plat recordation if

1. The applicant requests and the municipality authorizes the applicant to post a completion assurance and

2. the municipality has established a system for the partial release of the assurance as portions of the improvements are completed and accepted.

Before the improvements are accepted by the municipality, a developer may be required to execute an improvement warranty and post security of no more than 10% of the lower of the municipal engineer's original estimated costs or the applicant's reasonable proven cost.

3. **Acceptance of Improvements.** A municipality may not withhold an acceptance of a subdivision improvements because of an applicant's failure to comply with a requirement that is not expressed:

a. In the subdivision plat or documents upon which the subdivision plat is based;

b. In LUDMA;

c. In the municipality's ordinances. 10-9a-509(1)(i)

4. **Reasonable Diligence.** A municipality's land use authority shall determine with reasonable diligence whether the installation of required subdivision improvements or the performance of warranty work meets the municipality's adopted standards:

a. An applicant may in writing request the land use authority to accept or reject the applicant's installation of required subdivision

improvements or performance of warranty work;

b. The land use authority shall accept or reject subdivision improvements within 15 days after receiving an applicant's written request, or as soon as practicable after that 15-day period if inspection of the subdivision improvements is impeded by winter weather conditions;

c. The land use authority shall accept or reject the performance of warranty work within 45 days after receiving an applicant's written request, or as soon as practicable after that 45-day period if inspection of the warranty work is impeded by winter weather conditions;

d. If a land use authority determines that the installation of required subdivision improvements or the performance of warranty work does not meet the municipality's adopted standards, the land use authority shall comprehensively and with specificity list the reasons for its determination.

e. Applicants are still required to comply with all ordinances

f. No money damages are allowed as a remedy under this section. 10-9a-509.5(3)

5. **Allowing Building Permits.** A municipality may not deny a building permit because the applicant has not completed nonessential infrastructure for which an appropriate assurance has been provided.

2.13 Transferable Development Rights

1. A municipality may adopt an ordinance designating sending zones and receiving zones within the municipality and allowing the transfer of a transferable development right from a sending zone to a receiving zone.

2. A municipality may not allow the use of a transferable development right unless the municipality adopts such an ordinance. 10-9a-509.7

2.14 Vested Rights

1. **Ordinances Applicable to an Application.** An applicant who has filed a complete land use application, including the payment of all application fees, is entitled to substantive land use review of the land use application under the land use laws in effect on the date that the application is complete. Such an application is not subject to later changes in the ordinances. 10-9a-509.

2. **Specifications.** The land use laws related to a complete application include a municipal specification for public improvements applicable to a subdivision or development. 10-9a-509 (1)(a)(ii).

3. **Entitlement to Approval.** An applicant is entitled to approval of a land use application if the application conforms to the requirements of the municipality's land use maps, zoning map, a municipal specification for public improvements applicable to a subdivision or development, and an applicable land use ordinance in effect when a complete application is submitted and all application fees have been paid. 10-9a-509. *Western Land Equities v. Logan,* 617 P.2d 388 (Utah 1980)

4. **Exceptions.** The applicant of a complete application is not entitled to approval, even though the application conforms to the applicable ordinances, if:
    a. the land use authority, on the record, finds that a compelling, countervailing public interest would be jeopardized by approving the application, or
    b. in the manner provided by local ordinance and before the application is submitted, the municipality has formally initiated proceedings to amend its ordinances in a manner that would prohibit approval of the application as submitted. 10-9a-509(1)(a)(ii). *Western Land Equities v. Logan,* 617 P.2d 388 (Utah 1980)
5. **Approval Requirements.** A municipality may not impose on an applicant who has submitted a complete application for preliminary subdivision approval a requirement that is not expressed in the state LUDMA, a municipal ordinance; or a municipal specification for public improvements applicable to a subdivision or development that is in effect on the date that the applicant submits an application.
6. **Post-Approval Requirements.** A municipality may not impose on a holder of an issued land use permit or a final, unexpired subdivision plat a requirement that is not expressed in a land use permit, on the subdivision plat, in a document on which the land use permit or subdivision plat is based, in the written record evidencing approval of the land use permit or subdivision plat, in the state LUDMA, or in a municipal ordinance.

2.15 Miscellaneous Land Use Statutes

1. **Access to Private Property.** A municipality may enter upon any land at reasonable times to make examinations and surveys:
    a. Pertinent to preparation of the general plan or land use ordinances; and/or
    b. Enforcement of land use ordinances. 10-9a-303
2. **Amateur Radio.** A municipality may adopt and enforce ordinances that regulate the placement, screening, or height of an amateur radio antenna if the ordinance:
    a. Is based on health, safety, or aesthetic conditions; 10-9a-515(2)
    b. Complies with FCC Rule No. 101 FCC 2d 952 (1985); 10-9a-515(1)
    c. Complies with federal law at 47 C.F.R. 97; 10-9a-515(1)
    d. Reasonably accommodates amateur radio communications; 10-9a-515(2)(a)
    e. Represents the minimum practical regulation to accomplish the municipality's purpose. 10-9a-515(2)(b)
3. **Family Size – Minimum**.
    a. The land use ordinance cannot limit the number of unrelated people occupying each residential unit in a zone where a single family residence is allowed to less than four, except that:
    b. The maximum number may be three in a municipality where a state university or private university with 20,000 students is located. 10-9a-505.5
4. **High Tunnels.** A municipal building code does not apply to a "high tunnel" which is a non-permanent structure used for the keeping, storing, sale, or shelter of an agricultural commodity which has a metal, wood, or plastic frame; a plastic, woven textile, or other flexible covering; and a floor made of soil, crushed stone, matting, pavers, or a floating concrete slab. No building permit shall be required for the construction of a high tunnel. 10-9a-525.
5. **Homeless Shelters.** A municipality may not adopt or enforce an ordinance or other regulation that prohibits a homeless shelter from operating year-round if the facility:
    a. provides temporary shelter to homeless families

with children;

b. has capacity to provide temporary shelter to at least 200 individuals per night; and
c. began operation on or before January 1, 2016. 10-9a-526.

6. **Land Use Authority.** If a legislative body does not appoint a land use authority to act upon a specific land use application, then the legislative body is the land use authority for that purpose. 10-9a-103(24)(b).

7. **State and Federal Lands.** A municipality has no land use jurisdiction over property of the state or the United States. 10-9a-304

8. **Utility Related Land Divisions.** A municipality may exempt the division of land to site public utility infrastructure from zoning district standards. 10-9a-505(4).

SECTION 3 | Enforcement and Appeals

SECTION 3 | Enforcement and Appeals

3.1 Enforcement of Land Use Ordinances

1. **Formal Requirements Only.** Municipality may not impose requirements on the holder of an issued land use permit that are not expressed:
    a. In the land use permit; or
    b. In documents upon which the land use permit is based; or
    c. the written record evidencing the approval; or
    d. in LUDMA; or
    e. in the municipality's ordinances. 10-9a-509(1)(h)
2. **Certificate of Occupancy.** Municipality may not withhold a certificate of occupancy because of an applicant's failure to comply with a requirement that is not expressed:
    a. In the building permit or documents upon which the building permit is based;
    b. In LUDMA;
    c. In the municipality's ordinances. 10-9a-509(1)(i)
3. **Municipality Must Follow Ordinances.** A municipality is bound by the mandatory terms and standards of applicable land use ordinances and shall comply with mandatory provisions of those ordinances. 10-9a-509(2); *Springville Citizens v. Springville,* 1999 UT 25; *Culbertson v. Salt Lake County,* 2001 UT 108
4. **Private Enforcement.** A municipality or any adversely affected owner of real estate within the municipality may enforce land use ordinances and the LUDMA statute by instituting proceedings for:
    a. Injunctions:
        i. Which shall be granted to a municipality if the violation is established; 10-9a-802(1)(b)
        ii. Which may only be granted to a property owner seeking to enforce the ordinance or statute upon a showing of standing, prejudice, and appropriate cause; *Specht v. Big Water Town,* 2007 UT App 335
    b. Mandamus;
    c. Abatement;
    d. Or other appropriate actions. 10-9a-802(1)(a)
5. **Private Enforcement Only if Adversely Affected.** Property owners may only enforce a land use ordinance if they:
    a. Own property within the municipality; 10-9a-802(1)(a)
    b. Are "adversely affected" which means:
        i. That the property owner has been prejudiced by the violation or pending violation; and
        ii. Can establish what relief, if any, they are entitled to as a result of the illegal decision. *Springville Citizens v. Springville,* 1999 UT 25; *Specht v. Big Water Town,* 2007 UT App 335
6. **Current or Prospective Violations.** Enforcement actions may be brought against violations which have occurred or which are about to occur. 10-9a-802(1)(a)
7. **Notice and Opportunity to Cure Before Civil Penalty.** A municipality may not impose a civil penalty under a land use regulation until written notice has been provided to the address of the owner of record of the property involved or the person designated by the property owner as agent to receive such notice. The owner must have a reasonable opportunity to cure the noticed violation and understand beforehand the penalties that will be imposed by a time certain. 10-9a-803
7. **Local Penalties.** The municipality may establish penalties for the violation of LUDMA or land use

ordinances created under the authority of LUDMA. The penalties must be established by ordinance. 10-9a-803(1)

8. **State Penalties.** The penalty for violation of LUDMA under state law is a class C misdemeanor. A class C misdemeanor is punishable by:
   a. Up to 90 days in jail; 76-3-204
   b. A fine of up to $750.00 for a person. This limit does not apply to a fine against a business entity; 76-3-301
   c. Other penalties and costs. 76-3-201
9. **Attorney's Fees.** Attorney's fees may only be assessed against those bringing an action related to land use issues if the action is brought in bad faith. *Hatch v. Boulder Town,* 2001 UT App 55, ¶15. Attorneys fees may be ordered against a local government in the land use regulation context, however, if appropriate to vindicate a strong or societally appropriate public policy, to compensate a party for the cost of litigation that exceeds his or her interest in the lawsuit, and where an exceptional case justifies such an award as an equitable remedy. *Culbertson v. Salt Lake County,* 2008 UT App 22

   UT 69.

3.2 Appeals of Land Use Decisions

3.2A Who Can Appeal?

1. **Right to Appeal.** Decisions of a land use authority in administering or interpreting a land use ordinance may be appealed by the applicant, the municipality, or any person adversely affected by the decision. 10-9a-703 (1).
2. A party is affirmatively entitled to judicial review of any final and use decision whenever the decision adversely affects the party's interest. *Gillmor v. Summit County*, 2010 UT 69.
3. A person appealing a decision must establish, however, that they were prejudiced by the decision. This standard imposes a difficult burden, in that the appellant must prove that he is injured in a manner that is over and above the injury that the community would suffer. *Specht v. Big Water*, 2007 UT App 335.

3.2B When Can a Decision Be Appealed?

1. Exhaust Local Remedies First. Before challenging a municipality's land use decisions in district court, a person must make an appeal through the local appeals process. 10-9a-801(1); Patterson v. American Fork City, 2003 UT 7, ¶17
   a. A person need not appeal a local *legislative* decision to the local appeal authority. Legislative decisions include:
      i. Enacting or amending an ordinance;
      ii. Adopting the general plan;
      iii. Changing the zoning classification of a property; or
      iv. Annexing land;
   b. A person must appeal through the local appeal authority process most *administrative* decisions, including any decision interpreting or applying the land use ordinance, such as:
      i. Subdivision actions;
      ii. Conditional use permit decisions;
      iii. Building permit matters arising from the land use ordinance rather than the building code (the building code creates its own separate appeals process);
   c. A person may appeal a decision from the appeal authority to court, even if that appeal authority decision is the first action taken on a matter within the local administrative process. An example of this would be a variance decision, which is only heard once locally before it may be taken to the district court. 10-9a-708; 10-9a-801(2) and (4)

d. A person may only bring an issue to the district court if that issue was properly and adequately raised in the record of the appeal authority. *Fuller v. Springville City*, 2015 UT App 177.

2. **Deadlines Mandatory.** An appeal must be filed within the strict timeline imposed by state law or by local ordinance.

   a. Even the municipality is bound by such time limits and cannot reverse a local administrative land use decision if the decision is not timely appealed. *Brendle v. City of Draper,* 937 P.2d 1044 (UT App 1997)

   b. A person cannot cure his or her missing an appeal deadline by attempting to include that challenge in a quiet title action. *Powder Run v. Black Diamond Lodge,* 2014 UT App 43

3. **Local Appeals – Deadline in the Ordinance.** A person must file a local appeal in a manner that is consistent with the local ordinance within the time allowed by that ordinance. Unless otherwise provided in the ordinance, the deadline is ten days from the date that the decision became final.

   a. A final decision must normally be reduced to writing. 10-9a-704, 10-9a-708

   b. A local ordinance may provide for another event to occur which would render a decision final. 10-9a-708.

3. **District Court - Thirty Day Deadline.** In order to appeal a decision to district court, the person must file a petition for review with the court within 30 days of the date that the land use decision is final: 10-9a-801(2)(a) and (6)

   a. A local appeal authority decision is final when it is reduced to writing. 10-9a-708

   b. Other land use decisions are final:

      i. As provided for in local ordinance;

      ii. When reduced to writing. 10-9a-704

   c. The enactment of an ordinance must be appealed within 30 days of its enactment if the appellant claims a taking without just compensation. *Tolman v. Logan City*, 2007 UT App 260.

   d. But a facial challenge to a land use ordinance may otherwise be brought when challenging a subsequent land use decision applying the ordinance. *Gillmor v. Summit County*, 2010 UT 69.

3. **Faulty Notice.** The 30-day deadline to file an appeal:

   a. Might not limit the right of a person to appeal to the district court if the municipality did not comply with the notice requirements of 10-9a-205 for the meeting or hearing where the decision to be appealed was made.

   b. The notice requirements are:

      i. Notice required prior to a public *hearing* to adopt or modify a land use ordinance; 10-9a-205(2)

         A. Ten calendar days notice;

         B. Mail to affected entities; and

         C. Post in three physical locations, or on the municipal website; and

         D. Publish in newspaper and Post on the Utah Public Meeting Notice website. (State website not required if municipality's annual budget is less than $1 million.) 10-9a-204(3), 52-4-202(3)(b); or

         E. mail to each property owner whose land is directly affected by the land use ordinance change and adjacent property owners within a distance specified by local ordinance;

ii. Notice required prior to a public *meeting* to adopt or modify a land use ordinance: 10-9a-205(3)

A. Twenty-four hour notice;

B. Post in three physical locations or on the municipal website.

c. If the notice requirements were met for the meeting or hearing where the decision was made, the 30-day deadline to file litigation applies, and any lawsuit challenging the decision will likely be dismissed if not timely filed. 10-9a-801(2)(a)

d. In order to challenge the notice requirements, and thus avoid the 30-day filing deadline, the person making the challenge cannot have had actual knowledge that the decision was pending at that meeting or hearing. A person attending the meeting, for example, cannot challenge notice of the meeting. 10-9a-801(4)

4. **Ombudsman's Arbitration of a Taking.** The 30-day deadline to file an appeal is stayed, so the time limit stops running for the narrow issues raised in a request for arbitration filed with the office of the property rights ombudsman before the 30-day period has run out. 10-9a-801(2)(b) These issues include only constitutional takings issues as defined in 13-43-102 and thus are limited to certain property rights questions such as:

a. Whether a land use decision has denied the property owner all economically viable use of his or her property; *Arnell v. Salt Lake County Bd. of Adj.,* 2005 UT App 165

b. Whether a land use decision has imposed burdens on the property owner that are grossly disproportionate when weighed against the public benefits conferred and the property owner's reasonable investment-backed expectations; *Penn Central Transportation Co. v. City of New York,* 438 U.S. 104 (1978);*Lingle v. Chevron U.S.A. Inc.,* 544 U.S. 528, (2005)

c. Whether the approval of a land use application has been made subject to an illegal exaction. *B.A.M. Dev., L.L.C., v. Salt Lake County,* 2006 UT 2

5. **When Does the Time to Appeal Run?** The appeal period begins when an affected party receives actual or constructive notice of a final decision.

a. Decisions which are the subject of notice requirements under LUDMA or local ordinance are normally final on the date that they are reduced to writing. 10-9a-703, 708.

b. For a land use ordinance, it is final when properly signed, attested, approved as to form, and published. Any step which, if not taken, would render an ordinance void must be taken for the ordinance to be a final decision. *Olsen v. Park City*, 2013 UT App 262.

c. Where there is no notice required to a third parties, such as with a decision to issue a building permit, the time for that third party to appeal begins to run when the person who wishes to appeal is aware of the decision and has access to the essential facts necessary to form the basis for the objection. *Green v. Brown*, 2014 UT App 155. *Fox v. Park City*, 2008 UT 35.

d. A person who is aware that a building permit has been issued, for example by the initiation of construction or if the permittee posts a sign on the property indicating that a permit has been issued, those in the area become constructively aware of all details of the project that may give rise to a cause of action. If a person actually observes aspects of the project he considers to be illegal after the appeal period ends, it will nevertheless be too late to file an appeal at that time. *Fox v. Park City*, 2008 UT 35.

3.2C What Can Be Appealed?

1. **Can Only Appeal Decisions Applying Ordinance.**
    a. Only those decisions in which a land use authority has applied a land use ordinance to a particular application, person, or parcel may be appealed to an appeal authority. 10-9a-707(4)
    b. The refusal to consider a land use application is a land use decision,. *Gillmor v. Summit County*, 2010 UT 69
    c. The decision to issue or deny a building permit can be a land use decision. *Van Frank v. Salt Lake City*, 2010 UT App 188.
    d. An explanation of the nature or effect of a land use decision is not in itself a land use decision. The refusal to reverse or reconsider a land use decision is not a new land use decision. *Green v. Brown,* 2014 UT App 155.
    c. If a decision is made applying an ordinance, the appeal may include any and all claims related to that challenge, including facial challenges to an ordinance passed some years earlier. A person need not make a facial challenge to a land use ordinance within 30 days of the date that it is first passed. *Gillmor v. Summit County*, 2010

3.2D Appeal Authority

1. **Required.** Each municipality adopting a land use ordinance shall:
    a. Establish one or more appeal authorities to decide:
        i. Requests for variances from the terms of the land use ordinances; and
        ii. Appeals from decisions applying the land use ordinances;
        iii. Appeals from the payment of fees under 10-9a-510. 10-9a-701(1)
    b. Enact an ordinance establishing a reasonable time of not less than ten days to appeal to an appeal authority a written decision issued by a land use authority; 10-9a-704(1)
    c. If the council has not adopted an ordinance establishing a time to file an appeal to the board of appeals, a party shall have ten calendar days to appeal a written decision issued by a land use authority. 10-9a-704(2)
3. **Options.** A municipality may:
    a. Enact by ordinance the designation of separate appeal authorities to hear variance requests and other distinct types of appeals from the decisions of land use authorities;
    b. Require by ordinance that an adversely affected party must present to an appeal authority every theory of relief that it can raise in district court;
    c. Provide that specified types of land use decisions may be appealed directly to district court; 10-9a-701(4)
    d. Establish a standard of review for appeals of land use authority decisions. 10-9a-707(1)
4. **One Appeal.** A municipality may not require an adverse party to pursue duplicate or successive appeals before the same or separate appeal authorities prior to going to court. 10-9a-701(4)(d)
5. **Process.** An appeal authority shall:
    a. Act in a quasi-judicial manner; and
    b. Serve as the final arbiter of issues involving the interpretation or application of local land use ordinances; and 10-9a-701(3)
    c. Conduct each appeal and variance request as provided in local ordinance; and
    d. Respect the due process rights of each of the participants. 10-9a-706
        i. The demands of due process rest on the concept of basic fairness of procedure and demand a procedure appropriate to the case and just to the parties involved; *Rupp v.*

Grantsville City, 610 P.2d 340, 341 (Utah 1980)

ii. The minimum requirements of due process are adequate notice and an opportunity to be heard in a meaningful manner; *Dairy Product Services v. Wellsville*, 2000 UT 81, ¶ 49.

iii. To be considered a meaningful hearing, the concerns of the affected parties should be heard by an impartial decision maker; *V-1 Oil Co. v. Dept. of Environmental Quality,* 939 P.2d 1192, 1193 to 1197 (Utah 1997)

iv. In addition, a record is helpful to allow for judicial review, though where not available or complete, the reviewing court must be allowed to determine the facts to ensure due process was given. *Xanthos v. Board of Adj.,* 685 P.2d 1032 1034 (Utah 1984).

6. **Board Procedures.** If the appeal authority is a multi-person board, body, or panel, it shall:

   a. Notify each of its members of each meeting or hearing; and

   b. Provide each member the same information and access to municipal resources as any other member; and

   c. Convene only if a quorum of its members is present; and

   d. Act only upon the vote of a majority of its convened members. 10-9a-701(5)

3.2E Appeals Procedures

2. **Burden.** The appellant has the burden of proving that a land use authority has erred. 10-9a-705

3. **Standard of Review.** The appeal authority shall:

   a. Review matters brought before it as if the matter had not been decided before (that is, de novo) unless the council has set a different standard of review. 10-9a-707(2) Examples of a different standard of review might include a standard of deference to the land use authority making the decision unless clear error is shown;

   b. Review an issue related to the interpretation and application of a land use ordinance for correctness: 10-9a-707(3)

      i. In interpreting the meaning of zoning ordinances, the previous decision that is being reviewed as to the meaning of an ordinance is not entitled to deference. The appeal authority need not give any deference to the interpretation involved in the board, commission, official or council's decision that is being appealed to the appeal authority; *Carrier v. Salt Lake County,* 2004 UT 98, ¶26-29.

      ii. The board is to review the staff 's interpretation for correctness, giving it no deference. Although the person or entity making the appeal has the burden of proving that an error has been made, the person need show only an error in an order, requirement, decision, or determination made by an official in the administration or interpretation of the zoning ordinance. There is no requirement that the appeal authority give any deference to the administrator or executive official making the determination. The issue is whether the decision applying the ordinance correct, and not did the person making the decision act reasonably. *Brown v. Sandy City Board of Adj.,* 957 P.2d 207 (UT App 1998)

4. **Interpreting Ordinances.** How to interpret the meaning of an ordinance or rule:

   a. When we interpret a law, we look first to its plain language; only if the law's language is ambiguous do we rely on other methods of statutory interpretation; *Toone v. Weber County,* 2002 UT 103, ¶ 12.

   b. Because zoning ordinances are in derogation of a property owner's common-law right to

unrestricted use of his or her property, provisions therein restricting property uses should be strictly construed, and provisions permitting property uses should be liberally construed in favor of the property owner; *Patterson v. Utah County Bd. of Adj.,* 893 P.2d 602, 606 (UT App 1995)

c. The primary goal in interpreting the law is to give effect to the legislative intent, as evidenced by the plain language, in light of the purpose the statute was meant to achieve; *Mouty v. Sandy City,* 2005 UT 41, ¶17.

d. In cases of apparent conflict between provisions of the same law, it is the appeal authority's duty to harmonize and reconcile statutory provisions, since the court cannot presume that the legislature intended to create a conflict; *Bennion v. Sundance Development,* 897 P.2d 1232, 1235-1237, (Utah 1995)

e. A provision treating a matter specifically prevails over an incidental reference made thereto in a provision treating another issue, not because one provision has more force than another, but because the legislative mind is presumed to have stated its intent when it focused on that particular issue; *Bennion v. Sundance Development,* 897 P.2d 1232, 1235, (Utah 1995)

f. It is axiomatic that a statute should be given a reasonable and sensible construction and that the legislature did not intend an absurd or unreasonable result. *State ex rel. Div. of Consumer Prot. v. GAF Corp.,* 760 P.2d 310, 313 (Utah 1988)

5. **Separate Appeals Body.** An appeal authority may not entertain an appeal of a matter in which the appeal authority, or any participating member of the appeal authority, had first acted as a land use authority. 10-9a-701(3)(b)

6. **Substantial Evidence.** Any decision by the appeal authority is subject to 10-9a-801(3)(c). It is only valid if the decision is supported by substantial evidence in the record and is not arbitrary, capricious, or illegal.

3.2F Variances

1. **Characteristics.** Variances:

   a. Involve a waiver or modification of the requirements of a land use ordinance as applied to a parcel of property; 10-9a-702(1)

   b. Do not vary the use of property; 10-9a-702(5)

   c. Run with the land. 10-9a-702(4)

2. **Requested by Property Owner.** A variance may be requested by a person who owns, leases, or holds some other beneficial interest in a parcel of property that is to be the subject of the variance request. 10-9a-702(1)

3. **Required Findings.** A variance may only be granted if all of the following findings are made on the record:

   a. 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. 10-9a-702(2)(a)(i) An unreasonable hardship can only be found when the alleged hardship:

      i. Is located on or associated with the property and not from conditions that are general to the neighborhood;

      ii. Comes from circumstances peculiar to the property, and not from conditions that are general to the neighborhood;

      iii. Is not self-imposed;

      iv. Is not primarily economic, although there may be an economic loss tied to the special circumstances of the property; *Chambers v. Smithfield City,* 714 P.2d 1133 (Utah 1984)

   b. There are special circumstances attached to the property that do not generally apply to other

properties in the same zone. 10-9a-702(2)(a)(ii) The appeal authority may find that special circumstances exist only if the special circumstances:

i. Relate to the hardship complained of; and

ii. Deprive the property owner of privileges granted to other properties in the same zone;

iii. Are not simply differences between the property and others in the area; *Xanthos v. Board of Adj.,* 685 P.2d 1032 (Utah 1984)

c. Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zone; 10-9a-702(2)(a)(iii) and

d. The variance will not substantially affect the general plan and will not be contrary to the public interest; 10-9a-702(2)(a)(iv) and

e. The spirit of the land use ordinance is observed and substantial justice done. 10-9a-702(2)(a)(v)

4. **Burden.** The applicant bears the burden of proving that all the conditions justifying a variance have been met. 10-9a-702(3)

5. **Conditions.** In granting a variance, the appeal authority may impose additional requirements on the applicant that will:

   a. Mitigate any harmful effects of the variance; or

   b. Serve the purpose of the standard requirement that is waived or modified. 10-9a-702(6)

6. **Substantial Evidence.** Decision granting a variance must be supported by findings and substantial evidence in the record of the proceedings where the decision to grant the variance was made. *Wells v. Salt Lake City Bd. of Adj.,* 936 P.2d 1102, 1104-1105, (UT App 1997)

3.2F Appealing Decisions by the Appeal Authority

1. **Effective Date.** The decision of an appeal authority takes effect on the date when it is issued in writing or as otherwise provided by ordinance. 10-9a-708(1)

2. **Appeal to District Court.** Once a written, final decision is made by the appeal authority, or other final action is taken by the appeal authority as defined by local ordinance:

   a. The decision is ripe for an appeal of the matter to district court under 10-9a-801; and

   b. The 30-day time period begins to run during which an appeal to district court may be filed under 10-9a-801(2) and 801(4); 10-9a-708(2)

   c. The strict application of the appeals deadline may not apply if the appeal authority failed to conform to the notice requirements of LUDMA (unless the aggrieved person who should have had notice, had "actual notice" of the pending decision). 10-9a-801(4)

3.2G District Court Review

1. **No Change in Decision's Effective Date.** Filing an appeal does not stay the decision of a land use authority or appeal authority:

   a. There is no stay provided for in statute for decisions of a land use authority;

   b. An appeal authority decision may be stayed if, before filing a petition with the court, the aggrieved party petitions the appeal authority to stay its decision;

   c. The appeal authority may stay its decision if it finds that doing so is in the best interest of the municipality;

   d. The aggrieved party may also seek an injunction staying a decision by an appeal authority. 10-9a-801(9)

2. **Judicial Deference.** In reviewing a local land use decision, the courts shall give deference to the municipality and shall:
   a. Presume that the decision, ordinance, or regulation is valid; and
   b. Determine only whether the decision is arbitrary, capricious, or illegal. 10-9a-801(3)(a)
3. **Standard of Review.** The standard of review that a court will apply in judging a municipality's land use decision depends on whether the decision is administrative or legislative:
   a. Decisions by a legislative body may be either legislative or administrative; *Keigley v. Bench,* 89 P.2d 480, 483 (Utah 1939)
   b. Legislative decisions create new law. Administrative decisions execute or implement existing law; *Low v. City of Monticello,* 2002 UT 90 ¶23
   c. Legislative acts give rise to new law, involve the promulgation of laws of general applicability, and involve the weighing of broad, competing policy considerations. *Suarez v. Grand County*, 2012 UT 72.
   d. When land use decisions are at least arguably legislative, the Courts will give understandable deference to the formal nature of the governmental body making them and the formal nature of the action taken. *Suarez v. Grand County*, 2012 UT 72.
   e. Individual site specific rezoning is a legislative act. *Krejci v. Saratoga Springs*, 2013 UT 74
   f. All acts by a city council in a city using the "council-mayor" form of government are legislative. *Mouty v. Sandy City,* 2005 UT 41 ¶36 (According to the ULCT directory, these cities include: Holladay, Hooper, Logan, Marriott-Slaterville, Murray, Naples, Ogden, Provo, Riverton, Salt Lake City, Sandy, South Salt Lake, and Taylorsville. Check local ordinances to be sure what form of government your city uses.)
4. **Administrative Decisions.** Administrative decisions by a land use authority are valid if they are supported by substantial evidence in the record and are not otherwise arbitrary, capricious, or illegal: 10-9a-801(3)(c)
   a. A decision that is the result of careful consideration and supported by substantial evidence is not arbitrary. *Caster v. West Valley,* 2001 UT App 220, ¶4 (quoting *Patterson v. Utah County Bd. of Adj.,* 893 P.2d 602, 604 n. 6 (UT App 1995)
   b. A decision is illegal if it when it violates a law, statute, or ordinance in effect at the time the decision was made. Clearly a decision made pursuant to an unconstitutional ordinance falls within the definition of illegality. *Gillmore v. Summit County,* 2010 UT 69.
   c. Local actions must specifically comply with mandatory provisions of relevant ordinances. Substantial compliance is not sufficient; *Springville Citizens v. Springville,* 1999 UT 25 ¶28-29
   d. LUDMA does not limit constitutional claims against local government decisions. *Hatch v. Boulder Town Council,* 471 F.3rd 1142 (10th Cir. 2006); 10-9-801(3)(d)
5. **Legislative Decisions.** Legislative decisions by the council are valid if it is reasonably debatable that the decision, ordinance, or regulation *promotes the purposes of LUDMA* and is not otherwise illegal. This is a 2006 change in the law. Before that change, a legislative decision would be upheld if it was reasonably debatable that the decision promoted the general welfare and was not otherwise illegal. *Harmon City v. Draper,* 2000 UT App 31; *Bradley v. Payson,* 2003 UT 16 The purposes of LUDMA are:

a. 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 inhabitants and businesses;

b. To protect the tax base;

c. To secure economy in governmental expenditures;

d. To foster the state's agricultural and other industries;

e. To protect both urban and nonurban development;

f. To protect and ensure access to sunlight for solar energy devices;

g. To provide fundamental fairness in land use regulation; and

h. To protect property values. 10-9a-102(1)

6. **Illegal Decisions.** A local decision is illegal if it is determined that the decision, ordinance, or regulation violates a law, statute, or ordinance that was in effect at the time the decision was made or the ordinance or regulation adopted: *Gillmore v. Summit County,* 2010 UT 69.

   a. Local actions must specifically comply with mandatory provisions of relevant ordinances. Substantial compliance is not sufficient; *Springville Citizens v. Springville,* 1999 UT 25 ¶28-29

   b. LUDMA does not limit constitutional claims against local government decisions. *Hatch v. Boulder Town Council,* 471 F.3rd 1142 (10th Cir. 2006); 10-9-801(3)(d)

7. **Burden.** The person challenging a land use decision bears the burden of proof. *Harmon City v. Draper,* 2000 UT App 31 ¶28

8. **Record.** If a land use decision, ordinance, or regulation is challenged, the municipality shall transmit to the reviewing court the record of its proceedings including its:

   a. Minutes;

   b. Findings;

   c. Orders;

   d. If available, a true and correct transcript of its proceedings;

   e. A transcript of a tape recording is adequate. 10-9a-801(7)

9. **Record Review.** If there is a record of an *administrative decision* by a land use authority or an appeal authority, the district court's review is limited to the record.

   a. The record is to include only the evidence that was offered to the land use authority or the appeal authority, as the case may be, before the decision was made. 10-9a-801(8)(a)

   b. A person may only bring an issue to the district court if that issue was properly and adequately raised in the record of the appeal authority. *Fuller v. Springville City*, 2015 UT App 177.

10. **Lack of a Record.** If there is no record, the district court may call witnesses and take evidence. 10-9a-801(8)(b)

3.3 Initiative and Referendum

1. **Constitutional Right.** The Utah Constitution provides for the right of citizens to propose laws (referred to as "initiative") and, in certain circumstances, to review and vote on laws enacted by the municipality's legislative body (referred to as "referendum"). Article VI, Section 1(2)(b)

2. **Protected by the Courts.** The rights of initiative and referendum are compelling public interests and are entitled to protection by the courts. *Mouty v. Sandy City,* 2005 UT 41

3. **Legislative Issues Only.** Only legislative issues, and not administrative matters, may be the subject of

initiative or referendum. *Keigley v. Bench,* 89 P.2d 480 (Utah 1939); *Citizen's Awareness Now v. Marakis,* 873 P.2d 1117, 1122 (Utah 1994); *Krejci v. Saratoga Springs,* 2013 UT 74. But note that all acts by a city council in a city using the "council-mayor" form of government are legislative and therefore subject to referendum. *Mouty v. Sandy City,* 2005 UT 41 par 36 (According to the ULCT directory, these cities include: Holladay, Hooper, Logan, Marriott-Slaterville, Murray, Naples, Ogden, Provo, Riverton, Salt Lake City, Sandy, South Salt Lake, and Taylorsville. Check your local ordinance to be sure if your community also should be included)

4. **Land Use Initiatives.** Under the former law, land use laws and amendments to land use ordinances could not be proposed by initiative. This statute was overturned without the Court specifically stating so in *Sevier Power v. Hansen*, 2008 UT 72, where an initiative imposing a conditional use permit process on power plants was allowed to proceed to the ballot box. The appropriateness of allowing the public to vote on clearly administrative land use issues was not considered by the Court. Section 20A-7-401 related to local land use initiatives was therefore repealed by the legislature in 2012, and local land use initiatives are thus fully allowed.

5. **Zoning Amendments and Map Changes.** The rezone of individual property is subject to referendum. *Krejci v. Saratoga Springs,* 2013 UT 74; 20A-7-101(12)(b) Other changes to the zoning ordinance are also subject to referendum. *Mouty v. Sandy City,* 2005 UT 41 par 39; 20A-7-101(12)(b) The administrative implementation of a land use ordinance is not subject to referendum. 20A-7-401(2); *Wilson v. Manning,* 657 P.2d 251 (Utah 1982);

6. **Resolutions.** Resolutions expressing the sentiments of a legislative body are not subject to referendum because they do not create law. *Citizens for Responsible Transportation v. Draper,* 2008 UT 43

7. **Mandatory Duty of Municipality.** If a petition for referendum is properly presented to public officials, those officials are required by law to present the issue to the public for a vote. 20A-7-607 to 609

8. **Petitions—Number of Voters.** The number of current, registered voters that must sign a petition to submit a matter to referendum varies based on the number of votes cast for governor in the most recent election:

   a. 25,001 or more — 10% of the votes cast;

   b. 10,001–25,000 — 12.5% of the votes cast;

   c. 2,501–10,000 — 15% of the votes cast;

   d. 501–2,500 — 20% of the votes cast;

   e. 251–500 — 25% of the votes cast;

   f. 250 or less — 30% of the votes cast. 20A-7-601(1).

9. **More Signatures for Land Use Ordinances.** If the decision to be submitted to the voters is a land use development code, an annexation ordinance, or a comprehensive zoning ordinance, the percentages are:

   a. 20% of the votes cast in a city of the first or second class (more than 65,000 residents);

   b. 35% of the votes cast in other municipalities. 20A-7-601(2)

10. **Five Day Deadline.** The petition to require a referendum must be filed within 5 days after the passage of the local law, which is the date the legislative body voted. 20A-7-601(4) There are specific requirements for formatting and other details that must be complied with found at 20A-7-602 through 610.

11. **Vested Rights.** An applicant seeking a land use permit has no vested rights arising from a legislative land use decision until the 5 day period passes

during which a referendum petition can be filed, and if properly filed, until the voters ratify the legislative decision. *Mouty v. Sandy City*, 2005 UT 41, ¶¶ 14-15

12. **Timing of Election.** A referendum is to be voted on at the next regular general election unless the legislative body calls a special election. 20A-7-609(2)(b)

13. **Repeal of Law Before a Vote.** The repeal of a law by the legislative body nullifies the need for a referendum vote by the public, even if new and similar laws are passed. *Carpenter v. Riverton City,* 2004 UT 68

SECTION 4 Open Government

4.1 Government Records

4.1A Generally

1. **Purpose.** The Government Records Access and Management Act (GRAMA) was created to promote the public's right to easy and reasonable access to unrestricted public records while preventing abuse of confidentiality and providing guidelines to balance the rights of access with those of privacy. When countervailing interests are of equal weight, GRAMA favors public access. 63G-2-102

2. **Program.** Municipalities are to establish and maintain an active, continuing program for the economical and efficient management of municipal records, appoint records officers, ensure that they are trained, make and maintain documentation of the policies and procedures involved and fulfill other duties under GRAMA. 63A-12-103

3. **All Records.** All records created or maintained by a municipality are the property of the state and are not to be mutilated, destroyed, or otherwise damaged or disposed of except as provided for in GRAMA. 63A-12-105

4. **Sanctions.** Violations of GRAMA by either the public or public officials can be a class B misdemeanor. A public employee who intentionally refuses to release a record, the disclosure of which the employee knows is required by law or a final unappealed order under GRAMA, is guilty of a class B misdemeanor. 63G-2-801(3) He or she may also face municipal disciplinary action. 63G-2-804 A custodian of public records who destroys, steals, or mutilates the record may commit a third degree felony. 76-8-412

5. **Attorney's Fees.** Attorney's fees may be assessed against a municipality if the plaintiff in a legal action to enforce GRAMA provisions substantially prevails and other provisions of the statute are complied with. 63G-2-802

6. **Local Ordinance.** Municipalities may adopt an ordinance or policy related to information practices which can supplant portions of GRAMA:

   a. A local ordinance or policy may relate to classification, designation, access, denials, segregation, appeals, management, retention, or amendment of records;

   b. The ordinance or policy must comply with the criteria set forth in GRAMA;

   c. A copy of the ordinance or policy must be filed with the state archives within 30 days of its effective date;

   d. If a municipality adopts an appeals process, its decisions related to records are appealed to the district court, not to the state records committee. 63G-2-701

7. **Sharing Records.** Municipalities may sometimes share documents that are otherwise protected, controlled, or private with other governmental entities. 63G-2-206.

4.1B What is a Record?

1. **Records Assumed to be Public.** A record is public unless otherwise expressly provided by statute. 63G-2-201(2)

2. **"Record."** The term "record" includes books, letters, documents, papers, maps, plans, photographs, films, cards, tapes, recordings, electronic data, or other documentary material regardless of form or characteristics that is prepared, owned, received, or retained by a governmental entity or political subdivision and which can be reproducible by photocopy or other mechanical or electronic means. 63G-2-103(2)(a)

3. **Not a Record.** The term "record" does not include:

   a. A personal note or personal communication prepared or received by an employee or officer of a governmental entity in the employee's or officer's private capacity;

b. A temporary draft or similar material prepared for the originator's personal use or prepared by the originator for the personal use of an individual for whom the originator is working;

c. Material that is legally owned by an individual in the individual's private capacity;

d. Material to which access is limited by the laws of copyright or patent unless the copyright or patent is owned by a governmental entity or political subdivision;

e. Proprietary software;

f. Junk mail or a commercial publication received by a governmental entity or an official or employee of a governmental entity;

g. A book that is cataloged, indexed, or inventoried and contained in the collections of a library open to the public;

h. Material that is cataloged, indexed, or inventoried and contained in the collections of a library open to the public, regardless of physical form or characteristics of the material;

i. A daily calendar or other personal note prepared by the originator for the originator's personal use or for the personal use of an individual for whom the originator is working;

j. A computer program that is developed or purchased by or for any governmental entity for its own use;

k. A note or internal memorandum prepared as part of the deliberative process by a member of any other body charged by law with performing a quasi-judicial function (such as an appeal authority); or

l. A telephone number or similar code used to access a mobile communication device that is used by an employee or officer of a governmental entity, provided that the employee or officer of the governmental entity has designated at least one business telephone number that is a public record. 63G-2-103(22)(b)

4. **Records that are Public.** GRAMA provides that some specific records are generally public, including several related to land use regulation:

   a. Laws;

   b. Final opinions and orders of an administrative proceeding unless closed to the public;

   c. Final interpretations of statute or rules;

   d. Information in transcripts, minutes, and reports of open meetings;

   e. Administrative staff manuals, instructions to staff, and statements of policy;

   f. Contracts;

   g. Accounts, vouchers, contracts dealing with receipt or expenditure of funds by a municipality;

   h. Records relating to governmental assistance or incentives publicly disclosed, contracted for, or given by a municipality, encouraging a person to expand or relocate a business in Utah;

   i. Drafts circulated to anyone other than the municipality;

   j. Drafts relied upon to carry out action or policy;

   k. Notices of violation or similar records used to initiate proceedings for discipline or sanctions against persons regulated by the municipality, but not including records that initiate employee discipline. 63G-2-301

5. **Protected Records.** Protected records are narrowly described in GRAMA, but some relevant to land use issues may include:

   a. Records disclosing an attorney's work product, including the mental impressions or legal theories of an attorney or other representative of a governmental entity concerning litigation; 63G-2-305(17)

b. Records of communications between a governmental entity and an attorney representing, retained, or employed by the governmental entity if the communications would be privileged under the state judicial code; 63G-2-305(18)

c. Records prepared by or on behalf of a governmental entity solely in anticipation of litigation that are not available under the rules of discovery; 63G-2-305(16)

d. Records that would reveal negotiations regarding assistance or incentives offered by or requested from a governmental entity for the purpose of encouraging a person to expand or locate a business in Utah, but only if disclosure would result in actual economic harm to the person, or place the governmental entity at a competitive disadvantage. This section may not be used to restrict access to a record evidencing a final contract. 63G-2-305(35)

6. **Commercial Information.** If a person provides trade secrets or commercial information to a municipality that he believes should be protected, it is only to be protected if:

   a. Disclosure of the information could reasonably be expected to result in unfair competitive injury to the person submitting the information or would impair the ability of the municipality to obtain necessary information in the future;

   b. The person submitting the information has a greater interest in prohibiting access than the public in obtaining access; and

   c. The person submitting the information has provided the municipality:

      i. A written claim of business confidentiality; and

      ii. A concise statement of reasons supporting the claim of business confidentiality. 63G-2-304(1) and (2), 63G-2-309

4.1C Public Right to Access Records

1. **Right to Inspect.** Every person has a right to inspect a public record free of charge, and the right to take a copy of a public record during normal working hours. 63G-2-201(1)

2. **Local Discretion to Allow Access.** The head of a governmental entity or designee may determine whether some private or protected records should be disclosed to people other than those if: 63G-2-302(2), 63G-2-305

   a. There is no interest in restricting access to the record; or

   b. The interests favoring access outweighs the interest favoring restriction of access. 63G-2-201(5)

3. **Certified Copies.** A municipality shall provide a person with a certified copy of a record if the person requesting the record:

   a. Has a right to inspect it;

   b. Identifies the record with reasonable specificity; and

   c. Pays the lawful fees. 63G-2-201(7)

4. **Actions Not Required.** In response to a request, a municipality is not required to:

   a. Create a record;

   b. Compile, format, manipulate, package, summarize, or tailor information;

   c. Provide a record in a particular format, medium, or program not currently maintained by the municipality;

   d. Fulfill a person's records request if the request unreasonably duplicates prior records requests from that person; or

   e. Fill a person's records request if:

      i. The record requested is accessible in the identical physical form and content in a

public publication or product produced by the municipality receiving the request;

ii. The municipality provides the person requesting the record with the public publication or product; and

iii. The municipality specifies where the record can be found in the public publication or product;

The municipality can provide the requester with the means to assemble a record on his own. The Municipality need not assemble the record for the requester. *Maese v. Davis County*, 2012 UT App 48.

f. Upon request, a municipality may provide a record in a particular form if:

i. The municipality determines it is able to do so without unreasonably interfering with the municipality's duties and responsibilities; and

ii. The requester agrees to pay the municipality for providing the record in the requested form in accordance with a duly adopted fee schedule. 63G-2-201(8)

5. **Citizen Making Own Copies.** A municipality may allow a person requesting more than 50 pages of records to copy the records if:

a. The records are contained in files that do not contain records that are exempt from disclosure, or the records may be segregated to remove private, protected, or controlled information from disclosure; and

b. The municipality provides reasonable safeguards to protect the public from the potential for loss of a public record;

c. The municipality may provide the requester with the facilities for copying the requested records and require that the requester make the copies, or allow the requester to provide the requester's own copying facilities and personnel to make the copies at the municipality's offices and waive the fees for copying the records. 63G-2-201(9)

6. **Access to Electronic Versions.** A municipality may not use the physical form, electronic or otherwise, in which a record is stored to deny, or unreasonably hinder the rights of a person to inspect and receive a copy of a record under GRAMA. 63G-2-201(11). Provision of an electronic database is not required by GRAMA, however, if a local government entity provides access to the original records during normal working hours. *Maese v. Tooele County*, 2012 UT App 49.

7. **Paper Copy Optional.** A municipality may provide access to an electronic copy of a record in lieu of providing access to its paper equivalent. 63G-2-201(12)

4.1D Fees

1. **Fees for Copies.** A municipality may charge a reasonable fee to cover actual cost of providing a record. The fee shall be established by ordinance or written formal policy and approved by the executive officer of the municipality. 63G-2-203(1), 63G-2-203(3)(c)

2. **Costs to Compile Record.** When a governmental entity compiles a record in a form other than that normally maintained by the governmental entity, the actual costs charge may include the following:

a. The cost of staff time for compiling, formatting, manipulating, packaging, summarizing, or tailoring the record either into an organization or media to meet the person's request;

b. The cost of staff time for search, retrieval, and other direct administrative costs for complying with a request; and

c. In the case of fees for a record that is the result of computer output other than word processing, the actual incremental cost of providing the electronic services and products together with a reasonable portion of the costs associated with

formatting or interfacing the information for particular users, and the administrative costs as set forth above;

d. An hourly charge may not exceed the salary of the lowest paid employee who, in the discretion of the custodian of records, has the necessary skill and training to perform the request;

e. No charge may be made for the first quarterhour of staff time. 63G-2-203(2)

3. **Access Charges Optional.** A municipality may fulfill a record request without charge and is encouraged to do so when it determines that:

a. Releasing the record primarily benefits the public rather than a person; or

b. The individual requesting the record is the subject of the record or has other special status provided for in GRAMA; or

c. The requester's legal rights are directly implicated by the information in the record, and the requester is impecunious. 63G-2-203(4)

4. **Free Inspection.** A municipality may not charge a fee for:

a. Reviewing a record to determine whether it is subject to disclosure; or

b. Inspecting a record. 63G-2-203(5)

5. **Denial of Fee Waiver—Appeal.** A person who believes that there has been an unreasonable denial of a fee waiver may appeal the denial in the same manner as a person appeals when inspection of a public record is denied. The adjudicative body hearing the appeal has the same authority when a fee waiver or reduction is denied as it has when the inspection of a public record is denied. 63G-2-203(6)

6. **Advance Payment.** A municipality may require payment of past fees and future estimated fees before beginning to process a request if:

a. Fees are expected to exceed $50; or

b. The requester has not paid fees from previous requests. 63G-2-203(8)(a)

4.1E Processing a GRAMA Request

1. **Written Request.** A person making a request for a record must do so in writing, and provide:

a. The person's name, mailing address, and daytime phone number, if available; and

b. A description of the record that identifies the record with reasonable specificity. 63G-2-204(1)

2. **Time for Response.** The municipality shall respond to the request:

a. As soon as reasonably possible, but;

b. No later than ten business days after receiving the written request;

c. Unless the requester demonstrates that expedited response to the request benefits the public rather than the person, in which case no later than five business days; 63G-204(3)

d. A person requesting a record to obtain information for a story or report for publication or broadcast to the general public is presumed to be acting for the benefit of the public rather than a person. 63G-2-204(4)

3. **Response-Options.** The response shall be to:

a. Approve the request and provide the record; or

b. Deny the request; or

c. Notifying the requester that the municipality does not maintain the record; or

d. Explain extraordinary circumstances so it cannot immediately approve or deny the request, and provide the date when the records will be available. A detailed discussion of such extraordinary circumstances is found in 63G-2-204(3) and (5).

4. **No Response is Denial.** A municipality's failure to respond within the time allowed is considered a denial. 63G-2-204(8)

5. **Form of Denial.** A notice of denial shall include:

    a. A description of the record or portions of the record to which access was denied, provided that the description does not disclose private, controlled, or protected information; and

    b. Citations to the provisions of GRAMA or other regulation that exempt the record from disclosure; and

    c. A statement of the right to appeal the denial; and

    d. The time limits to file an appeal; and

    e. The name and business address of the chief administrative officer of the municipality or a designee appointed to hear appeals. 63G-2-205(2)

6. **Preserving Requested Record.** A municipality may not normally destroy or give up custody of any record to which access was denied until the period for an appeal has expired or the appeal process has ended, including judicial appeal. 63G-2-205(3)

4.1F Appeals

1. **Appealing Denial.** A person may appeal an access determination or fee within 30 days to the chief administrative officer of the municipality, or designee, by filing a notice of appeal containing:

    a. The petitioner's name, mailing address, and daytime phone number; and

    b. The relief sought;

    c. The petitioner may also file a short statement of facts, reasons, and legal authority in support of the appeal. 63G-2-401(1) through (3)

2. **Response to Appeal.** The chief administrative officer, or designee, shall make a determination on the appeal:

    a. Within five business days; or

    b. If the appeal involves a record which is the subject of a claim of business confidentiality, within 12 business days and after following procedures in the GRAMA statute to advise the person claiming business confidentiality of the appeal; 63G-2-401(5)

    c. If the person appealing is not the person requesting the record, the determination may be made within 30 days; 63G-2-401(8)

    d. If a decision is not timely made, it shall be considered a denial; 63G-2-401(5)(b)

    e. The chief administrative officer, or designee, may order the disclosure of information classified in GRAMA as private or protected, but not confidential, if the interests facing access outweigh the interests favoring restriction of access. 63G-2-401(6)

3. **Notice of Determination.** The municipality shall send written notice of the determination to all participants. If a denial of access is affirmed, the chief administrative officer, or designee, shall send a written statement that:

    a. The requester has the right to appeal the denial to either the State Records Committee or the district court;

    b. The time limits for filing an appeal; and

    c. The name and business address of the executive secretary of the records committee. 63G-2-401(7)

4. **Appeal.** A decision by the municipality's chief administrative officer may be appealed to a local records appeals body (if there is one); to the State Records Committee; or to the district court. If an appeal is made to the local or state appeals body first, instead of to court, that appeals body decision can still be appealed to the court. A person aggrieved, but not a party to the municipality's

internal appeal, may nevertheless appeal the decision: 63G-2-402

a. Appeals to the records committee or the court are normally to be filed within 30 days of the determination. Some exceptions are allowed if the municipality fails to respond to the request or claims extraordinary circumstances; 63G-2-403, 63G-2-404

b. Appeals from decisions claiming extraordinary circumstances necessitating delay may be filed with the records committee up to 45 days after the records request was submitted to the municipality if the chief administrative officer, or designee, failed to make a determination; 63G-2-403(1)

c. The appeal shall contain:

i. The petitioner's name, mailing address, and daytime telephone number;

ii. A copy of any denial of the record request; and

iii. The relief sought;

iv. A short statement of facts may also be filed with the appeal; 63G-2-403(2) and (3)

d. The records committee shall meet no sooner than 14 days nor longer than 52 days from the date of the appeal;

e. An expedited appeal may be heard for good cause shown; 63G-2-403(4)

f. Other details of the records committee appeals process are provided by statute at 63G-2-403;

g. Other details of the district court appeals process are provided by statute at 63G-2-404.

4.2 Open and Public Meetings

4.2A Generally

1. **Purpose.** The purpose of the Open and Public Meetings Act is to require the state, its agencies, and political subdivisions to take their actions and to conduct their deliberations openly. 52-4-102

2. **Meetings Usually Open.** All meetings are open to the public unless allowed to be closed under narrow circumstances. 52-4-201(1)

3. **"Meeting."** A "meeting" occurs in the presence of a quorum or majority of the members of a public body who meet for the purpose of discussing, receiving comments from the public about, or acting upon a matter over which they have jurisdiction. 52-4-103(5) A chance or social meeting is not regulated by the Open and Public Meetings Act, but is not to be used to circumvent the provisions of the Act. 52-4-208

4. **Workshop or Executive Session.** A workshop or executive session is an open meeting unless it meets the formal and statutory requirements for a closed meeting. If it is to be held on the same day as a regularly scheduled public meeting, it is to be held in the same location as the public meeting unless:

a. It is held at the same place as a regularly scheduled public meeting and the regularly scheduled public meeting is held somewhere else, or

b. Any meeting held that day is a site visit or traveling tour and public notice is given, or

c. The workshop or executive session is an electronic meeting held under 52-4-207, or

d. Emergency or extraordinary circumstances make holding the meeting at the regular location not practicable. 52-4-201(2)

5. **"Public Body."** A "public body" consists of:

a. Two or more persons, who;

b. Are part of a body created by rule, ordinance, or resolution; and

c. Expend, disburse, or is supported in whole or in part by tax revenue; and

d. Are vested with the authority to make decisions regarding the public's business. 52-4-103

6. **Training.** The presiding officer of a public body is to ensure that its members receive annual training on the requirements of the Open and Public Meetings Act. 52-4-104

7. **Disruptive Behavior.** A person who willfully disrupts a meeting to the extent that orderly conduct is seriously compromised may be removed. 52-4-301

8. **Texting Between Public Officials.** Members of a public body are not to text each other or exchange an electronic message during an open meeting. 54-2-210.

9. **Remedies—Voidability.** Any final action taken in violation of the Open and Public Meetings Act can be voided by a court, but suit to void an action must be brought within 90 days after the date of the action. (30 days for action to issue bonds, notes, or evidences of indebtedness). 52-4-302

10. **Remedies—Attorney's Fees.** Attorney's fees and court costs may be awarded to a successful plaintiff seeking to enforce the Open and Public Meetings Act. 52-4-303

11. **Remedies—Criminal.** Any person, including members of public bodies, who knowingly or intentionally violate or abet or advises a violation of the closed meeting provisions of the Open and Public Meetings Act is guilty of a class B misdemeanor. 52-4-305

12. **Enforcement.** The attorney general and county attorneys are to enforce the Open and Public Meetings Act. 52-4-303

4.2B Notice and Agenda

1. **Notice Requirements.** All public bodies must post a notice 24 hours before a meeting, including the date, time, place, and agenda of the meeting. 52-4-202(1)

2. **Annual Notice.** If the public body has a regular meeting schedule, it shall give public notice annually of that schedule. 52-4-202(2)(a)

3. **Written Notice.** Public notice may be satisfied by posting written notice at:

   a. The principal office of the public body, or if there is no principal office, at the building where the meeting is to be held; and

   b. On the Utah Public Meeting Notice website; and

   c. By providing notice to at least one newspaper of general circulation within the geographic jurisdiction of the public body or a local media correspondent; 52-4-202(3)

   d. Unforeseen internet hosting or communication technology failures do not render notice improperly given. 52-4-302(1)(b)

4. **Emergency Meetings.** Emergency meetings may be held without posting notice as required if:

   a. The best notice practicable is given of the time, place, and topics to be considered;

   b. An attempt has been made to notify all members of the public body; and

   c. A majority of the members approve of the public meeting. 52-4-202(5)

5. **Agenda Topics.** The notice shall provide reasonable specificity of the topics to be considered at the meeting. Each topic is to be listed as a separate agenda item. *See Suarez v. Grand Co*. 2012 UT 72.

6. **Items Not On Agenda.** A topic not on the agenda but raised by the public may be discussed:

   a. At the discretion of the presiding member of the body;

   b. But no final action may be taken on a topic that is not listed as an agenda item and included with the required public notice.

7. **Locations for Informal Meetings.** Workshops and executive sessions are normally to be held in the same location as normally scheduled public meetings if on the same day. 52-4-201(2)(b)

4.2C Minutes and Recordings

1. **Minutes and Recordings.** Written minutes and a recording shall be kept of all open meetings. 52-4-203(1)
    a. Written minutes shall include:
        i. The date, time, and place of the meeting;
        ii. The names of the members present and absent;
        iii. The substance of all matters proposed, discussed, or decided, which may include a summary of comments made by members of the public body;
        iv. A record, by individual member, of each vote taken;
        v. The name of each person recognized by the presiding member of the public body to provide testimony or comments;
        vi. The substance, in brief, of the testimony or comments provided by the public; and
        vii. Any other information that any member requests be entered in the minutes or recording. 52-4-203(2)
    b. No minutes are required for the following agencies if their annual expenditures for all funds are $50,000 or less:
        i. A local district under Title 17B
        ii. Limited Purpose Local Government Entities - Local Districts, or
        iii. special service district under Title 17D, Chapter 1, Special Service District Act. 52-4-203(7)(b)
2. **Site Tours.** No recording or written minutes are required for site visits and tours if no vote or action is taken. 52-4-203(7)(a)
3. **Complete Recording Required.** A recording of an open meeting shall be a complete and unedited record of all open portions of the meeting from the commencement of the meeting through adjournment and shall be properly labeled or identified with the date, time, and place of the meeting. 52-4-203(3)
4. **Minutes are Public.** The minutes and recordings of an open meeting are public records. Approved or pending minutes shall be available within 30 days of an open meeting. Approved minutes must be posted to pmn.utah.gov within three days of approval. 52-4-203(4)
5. **Minutes are Official Record, Not Recording.** An open meeting record kept by audio or video recording must be converted to written minutes within a reasonable time from the end of the meeting. 52-4-203(4)(b) The written minutes of the meeting, and not the recording, is the official record of action taken at the meeting. 52-4-203(4)(e)
6. **Recordings by the Public.** All or part of an open meeting may be independently recorded by any person in attendance if the recording does not interfere with the conduct of the meeting. 52-4-203(5) The recording may be an audio or video recording. 52-4-103(11)
7. **Documents are Public**. All documents or electronic media presented at a public meeting are public documents. Those making a presentation at an open meeting must provide an electronic or hard copy of any electronic information to the public body at the time of the presentation. The electronic or printed documents are part of the public record of the meeting and available to the public as a public record. 52-4-203(4)(d).

4.2D Closed Meetings

1. **Closed Meeting—Procedures.** A closed meeting may be held if:
    a. A quorum is present; and
    b. An agenda was properly posted for a public meeting; and
    c. Two-thirds of the members of the public body vote to approve closing the meeting; and
    d. The only matters discussed are those allowed for closed meetings; and
    e. No ordinance, resolution, rule, regulation, contract, or appointment is approved at the closed meeting; and
    f. There is a public announcement of, and the minutes of the open meeting include, the reason or reasons for holding the closed meeting, the location where the closed meeting will be held, and the vote by name of each member of the public body either for or against the motion to hold the closed meeting. 52-4-204(1) through (4)
2. **Closed Meeting—Purposes.** Purposes of a closed meeting:
    a. Discussion of the character, professional competence, or physical or mental health of an individual. 52-4-205(1)(a) But only if the person presiding signs a sworn statement affirming that the sole purpose for closing the meeting was for this purpose. No recording need be made of a closed meeting held for this purpose; 52-4-206(6)
    b. Strategy sessions to discuss collective bargaining; 52-4-205(1)(b)
    c. Strategy sessions to discuss pending or reasonably imminent litigation; 52-4-205(1)(c)
    d. Strategy sessions to discuss the purchase, exchange, or lease of real property, even water rights, but only if public discussion would:
        i. Disclose the appraisal or estimated value of the property under consideration; or
        ii. Prevent the public body from completing the transaction on the best possible terms; 52-4-205(1)(d)
    e. Strategy sessions to discuss the sale of real property if public discussion of the transaction would:
        i. Disclose the appraisal or estimated value of the property under consideration; or
        ii. Prevent the public body from completing the transaction on the best possible terms; and
        iii. The public body previously gave public notice that the property would be offered for sale; and
        iv. The terms of the sale are publicly disclosed before the public body approves the sale; 52-4-205(1)(e)
    f. Discussion regarding deployment of security personnel, devices or systems [52-4-205(1)(f)], but only if the person presiding signs a sworn statement affirming that the sole purpose for closing the meeting was for this purpose. No recording need be made of a closed meeting held for this purpose; 52-4-206(6)
    g. Investigative proceedings regarding allegations of criminal misconduct; 52-4-205(1)(g)
    h. deliberations related to local procurement procedures, including those involving trade secrets, as more particularly spelled out in the statute at 52-4-205(1)(m), (n) and (o).
    i. By decree of the courts, and not by statute, a public body acting in a quasi-judicial manner may deliberate behind closed doors. In the land use context, this would apply to an appeal authority, which acts in a quasi-judicial manner [10-9a-701(3)(a)(i)] which therefore may exclude the public from its deliberations much

as a jury would when making a decision about the facts or law of a given matter. Other public bodies acting in a "quasi-judicial" manner also qualify for this exception to the Open and Public Meetings Act. It is important to note, however, that the information gathering phase of a quasi-judicial process must take place in an open meeting. *Dairy Product Services v. Wellsville,* 2000 UT 81, par 60

3. **Closed Meeting—Recording.** A recording shall be made of a closed meeting, which shall be complete and unedited from the commencement of the closed meeting through adjournment of the closed meeting. 52-4-206(1) and (2) The recording shall include:
   a. The date, time, and place of the meeting;
   b. The names of members present and absent; and
   c. The names of all others present except where the disclosure would infringe on the confidentiality necessary to fulfill the original purpose of the closed meeting. 52-4-206(3)
   d. A recording is not mandatory if the sole purpose of the meeting is held to discuss the character and competence of an individual or security systems and the presiding officer so swears. 52-4-206(6)
4. **Closed Meeting—Minutes Optional.** Detailed written minutes may be kept that disclose the content of the closed portion of the meeting, but this is optional. 52-4-206(1)
5. **Protected Records.** Minutes or recordings of closed meetings are protected under GRAMA. 52-4-206(5)

If legal proceedings are brought to challenge the closing of a meeting, the court will review the recording or written minutes confidentially and decide if the meeting was legally closed. If legally closed, the record will be kept confidential and case dismissed. If illegally closed, the court shall disclose publicly all information about the portion of the meeting that was illegally closed. 52-4-304

4.2E Electronic Meetings

1. **Electronic Meetings.** Electronic meetings may be held if:
   a. The public body adopts a resolution, rule, or ordinance establishing procedures, limitations, or conditions governing electronic meetings; and
   b. Gives public notice of the meeting as provided for open meetings; and,
   c. Posts written notice at one or more anchor locations, one of which must be the location where the public body would normally meet if not holding an electronic meeting; and
   d. Notifies members of the public body 24 hours in advance that they may participate electronically and provides a description of how the members will be connected to the electronic meeting; and
   e. Provides space and facilities at the anchor location so that interested persons and the public may attend and monitor the open portions of the meeting; and
   f. Arranges for comments from the public, if accepted, for open portions of the meeting. 52-4-207

SECTION 5 Checklists for Land Use Actions

This section provides both instruction and specific practices for particular land use processes and permit applications. The checklists are intended for the use of land use authorities and their staff, as well as the applicant, to assure all that the correct process will be followed. Following each checklist are notes and practice tips.

5.1 General Plan

Every city and town, regardless of size, is required to have an updated general plan. The general plan is a practical vision of the future, capable of shifts in detail and arrangement over time as available resources and public preferences change. The general plan is practical, in that it lays out a series of objectives that the community realistically intends to accomplish over the coming years. The plan also reflects long-term vision. It describes the community and the way it hopes to be.

State law describes the general plan in this way:

> ***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.

The state requirements for the general plan are fairly simple. The plan must include:

1. Present and future needs of the municipality;
2. Growth and development of all or any part of the land within the municipality;
3. The results of an affordable housing assessment (towns are exempt); and
4. A map of the community as currently used or zoned.

The law then suggests a long list of other elements that *may* be included. Most communities add some or all of the elements suggested because doing so will assist them with future budget and land use decisions. The plan should be a "working plan," developed to not only meet the required essentials but to be of use to the community for at least the next five years.

The process requires the writing of the plan to be under the supervision of the planning commission. The commission is required to have at least one public hearing before recommending it to the legislative body. Once it is recommended by the planning commission, the plan may be adopted, amended, or rejected by the city council with or without a hearing.

5.1a Checklist | General Plan or Amendment to the General Plan

This includes the minimum of all actions required for both the planning commission and the legislative body, and staff (if present). Local ordinance may impose additional requirements.

Planning Commission

☐ 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. See Checklist 5.1b below)

☐ 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 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 above), 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.

Legislative Body

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

Continued

☐ 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. 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.

☐ 9. 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 – Adoption or Amendment of the General Plan

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 inhabitants 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 municipalities with populations over 1000, 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 legislative actions are subject to referendum filed within 5 days after their enactment.

5.1b Checklist | Notice Required for General Plan or Amendment to the General Plan in Weber, Davis, Salt Lake, and Utah Counties

- ☐ 1. Follow procedures outlined in Checklist 5.1 above
- ☐ 2. As part of completing Checklist Item 2 in Checklist 5.1, provide 10 calendar days notice of an intent to prepare a general plan or pass a comprehensive general plan amendment to:
- ☐ 3. affected entities; and
- ☐ 4. automatic Geographic Reference Center established in 63F-1-506; and
- ☐ 5. the association of Government to which the municipality is a member; and
- ☐ 6. on the Utah Public Notice Website.
- ☐ 7. Each notice under Subsection shall:
    - ☐ a. indicate that the municipality intends to prepare a general plan or a comprehensive general plan amendment, as the case may be;
    - ☐ b. describe or provide a map of the geographic area that will be affected by the general plan or amendment;
    - ☐ c. be sent by mail, e-mail, or other effective means;
    - ☐ d. invite the affected entities to provide information for the municipality to consider in the process of preparing, adopting, and implementing a general plan or amendment concerning:
        - ☐ i. impacts that the use of land proposed in the proposed general plan or amendment may have; and
        - ☐ ii. uses of land within the municipality that the affected entity is considering that may conflict with the proposed general plan or amendment; and
    - ☐ e. include the address of an Internet website, if the municipality has one, and the name and telephone number of a person where more information can be obtained concerning the municipality's proposed general plan or amendment.

(Proceed with Checklist Item 3 in Checklist 5.1)

5.2 Land Use Ordinances and Zone Changes

It is not required that a municipality have zoning, but keep in mind that without zoning, the jurisdiction has no authority to regulate or determine land use.

> ***10-9a-501. Authority to enact land use ordinances and zoning map.*** The legislative body may enact land use ordinances and a zoning map consistent with the purposes set forth in this chapter.

A zoning ordinance, legally adopted, has the force of law. Zoning has been part of the law in this country since the 1920s and has been through, literally, hundreds of challenges here in Utah and nationwide.

The zoning ordinance, like the general plan, is initially the responsibility of the planning commission. Once it is written, the commission, after a public hearing and any revisions, recommends it to the legislative body.

> ***10-9a-502. Preparation and adoption of land use ordinance or zoning map.***
>
> (1) The planning commission shall: (a) provide notice as required by Subsection 10-9a-205(1)(a);(b) hold a public hearing on a proposed land use ordinance or zoning map; and (c) prepare and recommend to the legislative body a proposed land use ordinance or ordinances and zoning map that represent the planning commission's recommendation for regulating the use and development of land within all or any part of the area of the municipality.
>
> (2) The municipal legislative body shall consider each proposed land use ordinance and zoning map recommended to it by the planning commission, and, after providing notice as required by Subsection 10-9a-205(1)(b) and holding a public meeting, the legislative body may adopt or reject the ordinance or map either as proposed by the planning commission or after making any revision the municipal legislative body considers appropriate.

Once the ordinance is passed by the council, it may be the responsibility of the planning commission to administer some or all of it as the designated land use authority. (It is important that the commissioners know the difference when they are acting as administrators, interpreting the law, and when they are acting as a recommending body, to make new land use law.)

The procedure to amend the ordinance is basically the same. Sometimes the council, the commission, or a petition from a citizen, will request an amendment in order to clarify, or make additions to or deletions from the ordinance.

More often, the commission will hear a petition from a citizen who is requesting a change in the zoning designation on his or her land. Both a change in zoning designation (map amendment) and change in the zone itself (text amendment) require the full-fledged amendment procedure, including final action of the council, after a public hearing with notice, and recommendation of the planning commission.

In recommending changes, the commission should be influenced by the general plan. If the change is supported by the general plan, then reference to the plan should be used to give support to the decision. If it is in opposition to the general plan, the commission should acknowledge the plan and give reasons or "findings" for the lack of concurrence. Typically, the general plan will contemplate development and infrastructure to serve development over a long time period. Zoning consistent with the general plan may have to wait until certain timing criteria have been met.

5.2 Checklist | Application for Land Use Ordinances and Zoning Map Changes

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

Planning Commission Action

☐ 1. Determine that the application for a zoning map or land use ordinance text amendment contains information required by local ordinance (a.k.a. "completeness determination").

☐ 2. Determine that all application fees have been paid.

☐ 3. Place the item on the next available planning commission agenda.

☐ 4. Provide a minimum of ten days published notice of a public hearing. Local ordinance may require even more notice. Notice the date, time, and place of the public hearing:

- ☐ a. to each affected entity; and
- ☐ b. posted:
  - ☐ i. in 3 or more public locations; or
  - ☐ ii. on the municipalities official website; and
- ☐ c. published in a newspaper of general circulation; and
- ☐ d. published on the Utah Public Notice Website.

☐ 5. Provide a minimum ten days advance notice of a hearing to consider a change in the zoning map to each property owner of land entirely or partially within the proposed map change area. This notice must:

- ☐ a. identify the property owners; and
- ☐ b. state the current and proposed zone for the property; and
- ☐ c. inform or provide reference information regarding the new restrictions that the property will be subject to if the proposed map change is enacted; and
- ☐ d. advise how to file a written objection; and
- ☐ e. notify of the location, date and time of the hearing.

Continued

5.2 Checklist | Application for Land Use Ordinances and Zoning Map Changes, *Continued*

☐ 6. Provide a minimum of 24 hours published notice of a public meeting

- ☐ a. in a least three public locations; or
- ☐ b. on the municipality's official website.

☐ 7. Provide the applicant with a copy of the staff report at least three days in advance of the hearing and each public meeting thereafter.

☐ 8. Conduct at least one public hearing before the planning commission.

☐ 9. The planning commission should consider relevant evidence and opinion related to whether or not the proposed zone change or ordinance amendment should receive a positive recommendation. Important references are whether the amendment:

- ☐ a. Is in the best interest of the citizens and community;
- ☐ b. Advances one or more of the goals of LUDMA (outlined in the Notes and Practice Tips); and
- ☐ c. Can be construed as generally consistent with one or more elements of the community's general plan.

☐ 10. The planning commission must vote and recommend approval or denial of a map change or land use ordinance amendment to the legislative body. A proposed zone change or amendment may be reviewed and revised by the planning commission as part of its recommendation.

Legislative Action

☐ 11. Place the item on the next available agenda of the legislative body.

☐ 12. Provide the required 24-hour notice, described under item 5. above for a meeting by the legislative body to consider the application. (A public hearing is not required by state law, but if one is required by local ordinance, provide the required notice described above under item 4. for the hearing. More notice may be required by local ordinance. (see 10-9a-206 regarding third party notice for adjacent property owners)

☐ 13. Provide the applicant with the staff report at least 3 days prior to the meeting.

Continued

5.2 Checklist | Application for Land Use Ordinances and Zoning Map Changes, *Continued*

- ☐ 14. Conduct at *least* one public meeting. A public hearing is not required by state law – check local ordinance.
- ☐ 15. The legislative body should consider the planning commission recommendation and any other relevant evidence and opinion related to whether or not the proposed zoning map or land use or ordinance amendment:
  - ☐ a. Is in the best interest of the citizens;
  - ☐ b. Complies with the goals of LUDMA; and
  - ☐ c. Can be construed as generally consistent with at least one element of the general plan.
- ☐ 16. The legislative body takes a vote and approves, modifies and approves, or denies the zoning map or land use ordinance amendment. A proposed map change or text amendment may be reviewed and revised by the legislative body prior to taking action without referring the matter back to the planning commission.
- ☐ 17. 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 plan and zone is derived from LUDMA. As such, all land use ordinances must advance at least one of 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 inhabitants 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.

Public opinion and the preferences of the members of the planning commission and legislative body are both relevant and adequate for consideration in contemplating zone changes and ordinance 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.

Zoning map changes and land use ordinance amendments should take the general plan into consideration, though unless the municipality has an ordinance to the contrary, the plan is only advisory.

The legislative body's decision to approve or deny a zone change or to adopt or reject a proposed amendment to the ordinances 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.

A zoning map change or land use ordinance text amendment is subject to appeal to the district court within 30 days of final action. It is also subject to the citizens' power of referendum within 45 days of enactment.

5.3 Temporary Land Use Regulation (TLUR, a.k.a. moratorium)

Sometimes, the best planning and foresight falls short of the public interest. In very limited circumstances, the jurisdiction can suspend the extended process for adopting or amending land use regulations and can adopt a temporary land use regulation without more than 24 hours notice and without the participation of the planning commission.

For obvious reasons, there are many limitations on this power. First, the temporary regulation can last for no more than 180 days. Second, it can be adopted in only two distinct circumstances:

1. If there is no zoning whatsoever. This circumstance would occur in a newly incorporated jurisdiction; or
2. In the event of a public emergency (compelling, countervailing public interest).

5.3 Checklist | Adopting a Temporary Land Use Regulation (TLUR)

- ☐ 1. Determine that a compelling, countervailing public interest demands the suspension of the land use regulation process, by-passing the process of planning commission review and recommendation, by-passing advance public notice and discussion, and enactment of an immediate land use regulation. (This requirement does not apply if the area is currently unregulated).
- ☐ 2. Place the TLUR ordinance on an agenda for the legislative body.
- ☐ 3. Provide 24-hour notice of the meeting. (See Checklist 5.9) A public hearing is not required by state law, but may be required by local ordinance. (See Checklist 5.9)
- ☐ 4. Conduct at least one public meeting. A public hearing is not required.
- ☐ 5. The legislative body publicly reviews the matter and considers any relevant evidence and opinion related to whether or not the proposed TLUR ordinance is justified by a compelling, countervailing public interest.
- ☐ 6. The legislative body takes a vote and approves or denies the TLUR ordinance for a specific time period that does not exceed 6 months.
- ☐ 7. Preserve the minutes of the meetings and hearings as required by law.

Notes and Practice Tips

A compelling, countervailing public interest is one that is vital and relatively urgent. Substituting the preferences of one land use authority over its predecessor does not represent a compelling, countervailing public interest; antiquated or illegal codes may. The justification for a TLUR should be a significant issue of health, safety, and welfare.

Special requirements are provided in state law for temporary regulations related to proposed transportation corridors, which may be effective for up to 18 months. The relevant statute is 10-9a-504 where specifics about the process involved are outlined.

5.4 Subdivisions

Once again it is not required that municipalities adopt a subdivision ordinance but the law does set a minimum standard of review if no local ordinance is in place. Again, we highly recommend that each jurisdiction implement a subdivision ordinance. New growth can dramatically shape the physical and financial future of a community.

> ***10-9a-601. Enactment of subdivision ordinance.***
>
> (1) The legislative body of a municipality may enact ordinances requiring that a subdivision plat comply with the provisions of the ordinance and this part before: (a) it may be filed or recorded in the county recorder's office; and (b) lots may be sold.
>
> (2) If the legislative body fails to enact a subdivision ordinance, the municipality may regulate subdivisions only to the extent provided in this part.

The planning commission is responsible for the creation and maintenance of the subdivision ordinance.

> ***10-9a-602. Planning commission preparation and recommendation of subdivision ordinance— Adoption or rejection by legislative body.***
>
> (1) The planning commission shall: (a) prepare and recommend a proposed ordinance to the legislative body that regulates the subdivision of land; (b) prepare and recommend or consider and recommend a proposed ordinance that amends the regulation of the subdivision of the land in the municipality; (c) provide notice consistent with Subsection 10-9a-205; and (d) hold a public hearing on the proposed ordinance before making its final recommendation to the legislative body.
>
> (2) The municipal legislative body may adopt or reject the ordinance either as proposed by the planning commission or after making any revision the legislative body considers appropriate.

Good subdivision development is important to almost every community in Utah. One or two houses are probably not going to have a city-wide influence no matter how large or out of character they may be. A large subdivision can and will have a major impact on the character, population, and the need for services. Therefore, the creation of a subdivision ordinance must be carefully, clearly, and precisely crafted.

If your municipality is using the same ordinance that it has used for more than five years, it is probably out of date. Here are just a few general rules that need to be considered:

1. The primary objective of the ordinance should be to tell the developer, objectively, how the jurisdiction wants subdivision to occur. Fiscal, safety, and aesthetic issues should be considered:

a. Fiscal issues include how the city or town will pay for future services to the development;

b. Safety issues include infrastructure standards, street layout, and width and intersection design;

c. Aesthetic issues might include how the subdivision will integrate into the already-developed areas of town;

2. The subdivision ordinance should clearly state that all development costs, including those incurred by the city for review, must be borne by the developer. However, the cost to the developer may not exceed the roughly proportionate cost of providing those services. In other words, development fees may not be a "profit center" for a city;

3. The ordinance should require the developer either to: (a) construct all improvements prior to recording a plat, or (b) procure an assurance, in the form of a bond, letter of credit, or cash, which will ensure that the improvements have been properly installed within a reasonable time. With few exceptions, the improvement assurance cannot be held for more than one year after the improvements are completed;

4. The jurisdiction cannot make demands of a developer if those demands are not in the ordinance;

5. The ordinance should delegate responsibility for administering the subdivision laws to the lowest possible level in the organization. Options include allowing staff to permit subdivisions, the planning commission, or the legislative body;

6. The developer should be responsible for all development fees. If the city charges impact fees, it must have completed a specific study that justifies the fees. (If you do not know the difference between impact fees and development fees, see the sections specific to exactions and impact fees);

7. Typically, the subdivision process is broken into two or three processes:

   a. Concept plan/sketch plat;

   b. Preliminary plat; and

   c. Final plat;

8. The ordinance should include the number of plans to be submitted for concept plan/sketch plat approval and preliminary plat approval as well as the manner in which the final plat should be submitted and recorded;

9. The ordinance should consider natural hazards and resources that need to be addressed by the developer;
10. Subdivision ordinances should detail landscaping and street lighting requirements, especially in commercial areas, and can require design elements in all zones;
11. Both the physical elements of road construction, such as width, depth, and materials, and the impact and flow of the traffic roads will produce, should be addressed in the ordinance;
12. The general plan should also provide for infrastructure and utility needs with a view to long-term demands that apply to future needs rather than just the short-term needs of a single development.

You may have decided by now that the writing of a subdivision ordinance is a very complicated endeavor. No one will disagree with you. A poorly written ordinance will come back to haunt you and the municipality for a very long time. A commission should take its time, look at a variety of ordinances, and even get professional assistance. While ordinances from other cities and towns can be helpful, each jurisdiction will need to tailor the ordinance to suit the community.

What follows are three checklists, which detail the subdivision approval process if the permitting authority is staff, the planning commission, or the legislative body.

5.4a Checklist | Subdivision Approvals by Staff

For use where the staff is the land use authority that makes a final decision

- ☐ 1. Determine that the land use ordinance allows the requested subdivision in the zone where the property is located.
- ☐ 2. Determine that the application contains the information required for a subdivision. The application requirements must be in the ordinance.
- ☐ 3. Determine that all application fees have been paid.
- ☐ 4. Consider whether the phase of the application (concept plan/sketch plat, preliminary plat, final plat) conforms to the ordinance. (If there is no subdivision ordinance, review the standards in state statute related to subdivisions.)
- ☐ 5. Provide 24 notice of a public meeting to consider the application if the land use authority includes more than one person. (See Checklist 5.9 item 5.) A public hearing is not required by state law, but may be required by local ordinance. (See Checklist 5.9)
- ☐ 6. Provide the applicant with a copy of any staff report that has been prepared in response to the application at least three days in advance of the public meeting. The staff report should reflect an analysis of whether the application complies with the specific subdivision ordinance standards.
- ☐ 7. Conduct the meeting, allowing broad input from the applicant, as well as relevant and credible evidence regarding the application's compliance with the vested ordinance (the ordinance in place at the time that the complete application was submitted and application fees were paid).
- ☐ 8. Either approve the phase of the application, noting on the record that it complies with the provision of the relevant ordinance; deny the phase of the application noting on the record how the evidence indicates that the application does not comply with the ordinance; or with the consent of the applicant, allow the applicant to modify the application in a specific manner that is required by a specific section of the municipal code.
- ☐ 9. Preserve the record of the proceedings to document the law and evidence that was considered by the land use authority before it made a decision related to the application.

Notes and Practice Tips

The action taken in response to a land use application is legal only if it is supported by substantial evidence in the record. "Substantial evidence" is evidence that is relevant and credible. To be relevant, it must relate to the standards in the ordinance related to the review of applications for conditional uses. To be credible, it must be objective.

While public testimony can produce substantial evidence, "public clamor," such as: "I don't like the project" is not substantial evidence. Evidence is independent—it stands on its own and is not based on lay opinion. The opinion of expert witnesses qualified to testify in their field of expertise can be substantial evidence if proper information is, or can be, provided supporting the qualifications of the persons expressing the opinion.

Generally speaking if the subdivision proposal complies with the zoning and the objective standards of the subdivision ordinance, then the land use authority must approve the subdivision application.

5.4b Checklist | Subdivision Approvals by Planning Commission

Where the Planning Commission is the land use authority that makes a final decision

☐ 1. Determine that the land use ordinance allows the requested subdivision in the zone where the property is located.

☐ 2. Determine that the application contains the information required for a subdivision. The application requirements must be in the ordinance.

☐ 3. Determine that all application fees have been paid.

☐ 4. Consider whether the phase of the application (concept plan/sketch plat, preliminary plat, final plat) conforms to the ordinance. (If there is no subdivision ordinance, review the standards in state statute related to subdivisions.)

☐ 5. Review standards in the ordinance that apply to the consideration of the phase (concept/sketch, preliminary or final) of the application. Are there written standards for exactions in the local ordinance? (If there is no subdivision ordinance, review the standards in state statute related to subdivisions.)

☐ 6. Provide the required 24 hour notice of a public meeting to consider the application. (See Checklist 5.9 item 5.) A public hearing is not required by state law, but may be required by local ordinance. (See Checklist 5.9)

☐ 7. Provide the applicant with a copy of any staff report that has been prepared in response to the application at least three days in advance of the public meeting. The staff report should reflect an analysis of whether the application complies with the specific subdivision ordinance standards.

☐ 8. A single public meeting is required by state statute. Local ordinance may require more. Some local ordinances require a public hearing. These ordinances should be revised to eliminate the public hearing requirement.

☐ 9. Conduct the meeting that is required by the ordinance and state statute as part of the consideration of the application for subdivision. In the public hearing, allow broad input from the applicant, as well as relevant and credible evidence from the public regarding compliance with the vested ordinance.

Continued

4.4b Checklist | Subdivision Approvals by Planning Commission, *Continued*

☐ 10. Either approve the phase of the application, noting on the record that it complies with the provision of the relevant ordinance; deny the phase of the application noting on the record how the evidence indicates that the application does not comply with the ordinance; or with the consent of the applicant, allow the applicant to modify the application in a specific manner that is required by a specific section of the municipal code.

☐ 11. Preserve the record of the proceedings to document the law and evidence that was considered by the land use authority before it made a decision related to the application.

Notes and Practice Tips

The action taken in response to a land use application is legal only if it is supported by substantial evidence in the record. "Substantial evidence" is evidence that is relevant and credible. To be relevant, it must relate to the standards in the ordinance related to the review of applications for conditional uses. To be credible, it must be objective.

While public testimony can produce substantial evidence, "public clamor," such as: "I don't like the project" is not substantial evidence. Evidence is independent—it stands on its own and is not based on lay opinion. The opinion of expert witnesses qualified to testify in their field of expertise can be substantial evidence if proper information is, or can be, provided supporting the qualifications of the persons expressing the opinion.

Generally speaking, if notice is given, and the subdivision proposal complies with the zoning and the objective standards of the subdivision ordinance, then the land use authority must approve the subdivision application.

5.4c Checklist | Subdivision Approvals by Legislative Body

Where the Planning Commission is not the land use authority but, as designated by local ordinance, it acts as advisor to the legislative body for subdivision plat approvals

Planning Commission Action

☐ 1. Determine that the land use ordinance allows the requested subdivision in the zone where the property is located.

☐ 2. Determine that the application contains the information required for a subdivision. The application requirements must be in the ordinance.

☐ 3. Determine that all application fees have been paid.

☐ 4. Consider whether the phase of the application (concept plan/sketch plat, preliminary plat, final plat) conforms to the ordinance. (If there is no subdivision ordinance, review the standards in state statute related to subdivisions.)

☐ 5. Review standards in the ordinance that apply to the consideration of the phase (concept/sketch, preliminary or final) of the application. Are there written standards for exactions in the local ordinance? (If there is no subdivision ordinance, review the standards in state statute related to subdivisions.)

☐ 6. Provide the required 24 hour notice of a public meeting before the planning commission or the legislative body to consider the application. (See Checklist 5.9 item 5.) A public hearing is not required by state law, but may be required by local ordinance. (See Checklist 5.9)

☐ 7. Provide the applicant with a copy of any staff report that has been prepared in response to the application at least three days in advance of the public meeting. The staff report should reflect an analysis of whether the application complies with the specific subdivision ordinance standards.

☐ 8. A single public meeting is required by state statute. Some local ordinances require a public hearing. These ordinances should be revised to eliminate the public hearing requirement.

☐ 9. Provide the applicant with a copy of the staff report on the application at least three days in advance of the public meeting.

Continued

5.4c Checklist | Subdivision Approvals by Legislative Body, *Continued*

☐ 10. Conduct the meeting that is required by the ordinance and state statute as part of the consideration of the application for subdivision. In the public meeting, allow broad input from the applicant, as well as relevant and credible evidence from the public regarding compliance with the vested ordinance.

☐ 11. The planning commission must:

- ☐ a. Recommend approval of the phase of the application, noting on the record that it complies with the provision of the relevant ordinance;
- ☐ b. Recommend denial of the phase of the application noting on the record how the evidence indicates that the application does not comply with the ordinance; or
- ☐ c. With consent of the applicant, allow the applicant to modify the application in a specific manner that is required by a specific section of the municipal code.

Legislative Action

☐ 12. Place the item on an agenda for the legislative body.

☐ 13. Provide the required notice of a meeting to consider the application. State law requires 24 hours notice. Local ordinance may require more. (See Checklist 5.9)

☐ 14. Review standards in the ordinance that apply to the consideration of the application. (If there is no subdivision ordinance, review the standards in state statute related to subdivisions.)

☐ 15. Provide the applicant with a copy of the staff report at least three days in advance of the public meeting before the legislative body.

☐ 16. Conduct the meeting that is required by the ordinance and state statute as part of the consideration of the application for subdivision.

☐ 17. Consider evidence, which is before the legislative body, that is both relevant and credible related to whether or not the proposed subdivision complies with the ordinances in place at the time that the complete application was submitted and all relevant fees were paid.

☐ 18. Consider the recommendations of the planning commission.

Continued

5.4c Checklist | Subdivision Approvals by Legislative Body, *Continued*

☐ 19. Either approve the phase of the application, noting on the record that it complies with the provision of the relevant ordinance; deny the phase of the application noting on the record how the evidence indicates that the application does not comply with the ordinance; or with the consent of the applicant, allow the applicant to modify the application in a specific manner that is required by a specific section of the municipal code.

☐ 12. Preserve the record of the proceedings to document the law and evidence that was considered by the land use authority before it made a decision related to the application.

Notes and Practice Tips

The action taken in response to a land use application is legal only if it is supported by substantial evidence in the record. "Substantial evidence" is evidence that is relevant and credible. To be relevant, it must relate to the standards in the ordinance related to the review of applications for conditional uses. To be credible, it must be objective.

While public testimony can produce substantial evidence, "public clamor," such as: "I don't like the project" is not substantial evidence. Evidence is independent—it stands on its own and is not based on lay opinion. The opinion of expert witnesses qualified to testify in their field of expertise can be substantial evidence if proper information is, or can be, provided supporting the qualifications of the persons expressing the opinion.

Generally speaking, if notice is given, and the subdivision proposal complies with the zoning and the objective standards of the subdivision ordinance, then the land use authority must approve the subdivision application.

5.5 Conditional Uses

Conditional uses are tools that are meant to give limited flexibility to a zoning ordinance. Specific zones usually have lists of permitted uses and conditional uses. It is possible to have zones that have no conditional uses. In fact, it is possible that a community does not have conditional uses at all. To be enforced, they must be specifically detailed, with accompanying review standards.

If a specific use is listed as conditional in a given zone, the applicant will apply for a permit for the use. The land use authority will then apply the criteria for review as outlined in the ordinance. Then the land use authority will place specific conditions on the permit tailored to the specific location and use.

A conditional use is regulated by the following standards:

> ***10-9a-507. Conditional uses.***
>
> (1) A land use ordinance may include conditional uses and provisions for conditional uses that require compliance with standards set forth in an applicable ordinance.
>
> (2) (a) A conditional use shall be approved if reasonable conditions are proposed, or can be imposed, to mitigate the reasonably anticipated detrimental effects of the proposed use in accordance with applicable standards. (b) If the reasonably anticipated detrimental effects of a proposed conditional use cannot be substantially mitigated by the proposal or the imposition of reasonable conditions to achieve compliance with applicable standards, the conditional use may be denied.

If a use is allowed as a conditional use in the zone, it is assumed that the conditional use is desirable but that it may require an extra level of review. The review criteria must be outlined in the local land use code. Denial must be based on some factor unique to the proposed location that renders the potential negative effects of the proposed use in that location beyond mitigation, where those same potential negative effects could be mitigated elsewhere in the zone.

"Mitigation" means to temper or reduce the negative aspects, not to eliminate them; conditions that mitigate the negative aspects of a conditional use would make those negative aspects less severe or harmful.

The action taken in response to a land use application is legal only if it is supported by substantial evidence in the record. "Substantial evidence" is evidence that is relevant and credible. To be relevant, it must relate to the standards in the ordinance related to the review of applications for conditional uses. To be credible, it must be objective and independent.

Generally, public opinion testimony is inappropriate with respect to a conditional use permit application. Evidence against a conditional use permit application must not be based on public opinion.

Public clamor is not evidence. The opinion of expert witnesses qualified to testify in their field of expertise can be substantial evidence if proper information is provided supporting the qualifications of the persons expressing the opinions.

Conditional use permits are always “administrative” decisions. As such, the standard for review on appeal is whether there is substantial evidence in the record to support the decision. A conditional use permits decision is subject to appeal within 30 days. It is not subject to referendum.

5.5 Checklist | Conditional Use Approvals

☐ 1. Determine that the land use ordinance allows the requested use as a conditional use in the zone where the property is located.

☐ 2. Determine that the application contains the information required by ordinance for processing the conditional use application.

☐ 3. Determine that all application fees have been paid.

☐ 4. Place the item on an agenda for the land use authority, if the land use authority is composed of a board or commission that includes more than one person.

☐ 5. Provide the required notice of a public meeting or public hearing if required by local ordinance. State law requires no specific notice for conditional use permits. If the land use authority is a board such as the Planning Commission or the Legislative Council, the Open and Public Meetings Act requires 24 hours notice prior to a public meeting. (See Checklist 5.9 item 5.) Local ordinances may require additional notice.

☐ 6. Provide the applicant with the staff report three days in advance of the public meeting or hearing before the land use authority.

☐ 7. Review only those standards that are written in the ordinance that apply to the consideration of the application. (If there are no standards, approve the application as if it were a permitted use without imposing conditions.)

☐ 8. Conduct the meeting or hearing that is required by the ordinance as part of the consideration of the application.

☐ 9. The land use authority should consider only the application, the relevant and credible evidence that concerns the negative aspects of the proposed use in the proposed location, and only to the extent that the ordinance requires mitigation for specific aspects of a use (i.e. traffic, noise, smell, light, etc.).

☐ 10. After considering the ordinance-based standards and the evidence, identify the potentially negative aspects of the proposed use in the proposed location.

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5.5 Checklist | Conditional Use Approvals - *Continued*

☐ 11. Either:

- ☐ a. Approve the use as proposed; or
- ☐ b. If appropriate, impose reasonable conditions supported by substantial evidence in the record that cause the application to:
  - ☐ i. Comply with the standards in the ordinance; and
  - ☐ ii. Mitigate the potentially negative aspects of the proposed use that are required by standards in the ordinance; or
- ☐ c. Deny the use and adopt findings supported by substantial evidence in the record why the application:
  - ☐ i. Does not comply with the standards in the ordinance; and
  - ☐ ii. Cannot be mitigated by additional conditions.

☐ 12. Preserve the record of the proceedings to document the law and evidence that was considered by the land use authority before it made a decision related to the application.

Notes and Practice Tips

Be certain that the local ordinance contains standards and criteria for the conditional use. Any conditions placed on a project must relate to these standards and criteria as detailed in the local ordinance.

5.6 Exactions

An exaction is a requirement to donate land or infrastructure to the municipality that is imposed on an applicant as a condition of development approval. An exaction requirement is allowed only to offset the off-site impacts of the proposed development. To be legal, an exaction must be roughly proportionate in kind and quality to the cost of the impact of the development on the municipality.

5.6 Checklist | Imposing Exactions on Applicants

For administrative land use approvals

- ☐ 1. Determine that the land use ordinance requires an exaction on the application being considered. If an application complies with the ordinances in place when it was submitted in complete form, and all application fees were paid, then it is entitled to approval.
- ☐ 2. If the ordinance provides for specific exactions, determine how the application will burden public services provided by the municipality.
- ☐ 3. Determine what the net burden created by the development will be, taking into account offsetting factors such as:
  - ☐ a. Impact fees, which will be collected from the applicant, that may offset burdens created by the development;
  - ☐ b. Property that the applicant proposes to provide to the municipality for public improvements, which do not serve the proposed development, or which exceed the size needed to serve the proposed development, but which the municipality wishes to accept; and
  - ☐ c. Other factors that mitigate the real impact of the development on each public service that may be the subject of an exaction.
- ☐ 4. After considering the burdens imposed, and any offsetting factors, identify the cost that the municipality would bear to offset the burdens created by the proposed development on a specific public service. Do not analyze costs/burdens borne by other governmental entities.
- ☐ 5. Impose exactions that place burdens on the development that are *roughly* equivalent to the impact that the development will have on public services provided by the municipality. The precise mathematical equivalent is not required.
- ☐ 6. Support the decision to impose exactions with substantial evidence in the record indicating that each exaction:
  - ☐ a. Is provided for by ordinance; and
  - ☐ b. Addresses a burden created by the proposed development; and
  - ☐ c. Offsets a burden that the municipality itself will bear absent the exaction; and

☐ d. Imposes a burden on the development in terms of dollars and cents that is roughly equivalent to the cost that the municipality would have to pay to offset the *net* burden created by the development (after considering offsetting factors), absent the exaction.

Notes and Practice Tips

Exactions are often misunderstood and can be a challenging source of conflict between a local jurisdiction and a developer. Consult professional advisors if the exaction or the exaction methodology is contested.

5.7 Appeals from the Land Use Authority

It would be great if every land use authority always objectively applied the law of the jurisdiction to the facts of the application. They don't always get it right. They are human.

Even when the land use authority gets it exactly right, opinions can differ as to whether the law was applied correctly. No matter how tightly the local land use ordinance is written, creative minds can find ambiguity.

It is the appeal authority's role to correct land use authority errors and to interpret local land use ordinances. The appeal authority acts as the jurisdiction's final word on the application. Insulated from the heat of the original land use authority decision, the appeal authority serves as the jurisdiction's last good chance to "get it right."

The appeal authority is 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.

Historically, boards of adjustment have served as the appeal authority for most appeals in most jurisdictions. Because appeals and requests for variances are infrequent, and because the expectations for appeal authorities to act in a "quasi-judicial" manner have risen in the last decade, many jurisdictions have replaced their boards of adjustment with a professional hearing examiner or a professional Board of Land Use Appeals.

5.7 Checklist | Appeals from Decisions Applying the Land Use Ordinance

☐ 1. Determine that a final land use decision has been rendered by a land use authority.

☐ 2. Determine that the request for appeal was filed in a timely manner. State law allows the local ordinance to set a deadline to appeal. If no deadline is set by ordinance, the person bringing the appeal has ten days calendar days after the land use decision has been rendered in writing. If the appeal was not timely made, the appeal authority has no jurisdiction and may not hear the matter.

☐ 3. Determine that the request for appeal is sufficiently complete for consideration. If it is incomplete, tell the appellant, specifically, how the appeal is deficient.

☐ 4. Determine that all appeal fees have been paid.

☐ 5. Place the item on an agenda for the appeal authority, if the appeal authority is composed of a board or commission that includes more than one person.

☐ 6. Provide the required notice of the meeting to consider the application. (See Checklist 5.9 item 5.) A public hearing is not required by state law, but may be required by local ordinance. (See Checklist 5.9).

☐ 7. Provide the appellant with the staff report or other municipal documents to be relied upon 3 days prior to the meeting or hearing.

☐ 8. Review standards in the local land use ordinance and state law that apply to the consideration of the appeal.

☐ 9. Verify that the appeal authority is impartial and free of bias from conflicts of interest with regard to the matter before it.

☐ 10. Conduct the meeting, and, if a hearing is required by local ordinance as part of the consideration of an appeal application, a hearing. A hearing is not required by state law.

☐ 11. Act in a quasi-judicial manner and gather evidence impartially. Afford the applicant and the appellant due process, which includes the rights of notice, to be heard, to confront witnesses, and to respond to evidence submitted by others. Note: To act in a quasi-judicial manner includes the restriction of ex-parte communications between any member of the appeal authority and any individual wishing to discuss the appeal outside of a hearing. All

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information must be made available to all members of the appeal authority as well as both the appellant and appellee. This allows both sides the opportunity to confront witnesses and respond to evidence submitted by others.

☐ 12. If there is no standard of review provided for in the local land use ordinance, consider the appeal "de novo," which means that the appeal authority may look at the issue as a new issue, as if the matter had not been decided before. The appeal authority, if acting "de novo," does not need to defer to the prior decision of the land use authority. If the ordinance provides for a different standard of review, follow the local ordinance.

☐ 13. Allow the person bringing the appeal to present evidence supporting his or her appeal. The person bringing the appeal has the burden to show that the previous decision was in error. If the person does not meet this burden, dismiss the appeal.

☐ 14. If a person appears in opposition to the appeal and will be adversely affected if the appeal is granted, allow him or her to present evidence supporting his or her point of view. While the procedure need not be overly formal, allow each side to respond to the evidence presented by the other side.

☐ 15. Deliberate. Since an appeal authority is a quasi-judicial body, its deliberations may be conducted in private. Consider evidence that is before the appeal authority that is both relevant and credible related to the issue on appeal. Neither party to the appeal may join in the private deliberations, including the planning staff if they are defending the city's decision and are therefore a party. After considering the standards and the evidence, determine which view of the matter is correct.

☐ 16. In interpreting the law or ordinance, look to its plain language. If the ordinance has been interpreted in the past, be consistent with prior interpretation. If the ordinance is ambiguous, interpret ambiguities in a light favorable to the use of property. If it is not ambiguous, give effect to the intent of the legislative body that enacted the law or ordinance. Harmonize conflicting provisions so that they can be reconciled. Do not impose an absurd or unreasonable result.

☐ 17. If, in the opinion of the appeal authority:

- ☐ a. The appellant has provided substantial evidence in the record to support his or her point of view, and there is no substantial evidence to the contrary, approve the appeal.

- ☐ b. The appellant has failed to provide substantial evidence in the record to support his or her point of view, deny the appeal.

☐ 18. Support the action of the appeal authority with evidence in the record, identifying the evidence that the appeal authority relied upon in its decision. The decision must be supported by substantial evidence in the record and not solely by public clamor. The appeal authority may be assisted by professional staff.

☐ 19. Preserve the record of the proceedings to document the law and evidence that was considered by the appeal authority before it made a decision related to the application.

Notes and Practice Tips

The action taken by an appeal authority is legal only if it is supported by substantial evidence in the record. "Substantial evidence" is evidence that is relevant and credible. To be relevant, it must relate to the standards in the ordinance and state law related to the review of applications for variances. To be credible, it must be objective and independent.

Public clamor is not substantial evidence. Evidence is independent—it stands on its own and is not based on public opinion. For the average person, either participating in a land use decision as a member of the appeal authority or as a citizen, his opinion is not evidence. Evidence is the justification—the facts—that are the basis for the opinion.

The opinion of expert witnesses qualified to testify in their field of expertise can be substantial evidence if proper information is provided supporting the qualifications of the persons expressing the opinions.

5.8 Variances

A variance is a limited means by which a property owner can obtain relief from certain provisions of a land use ordinance. Variances are governed by 10-9a-702. A variance is appropriate when, because of particular physical surroundings, shape, or topographical conditions of the property, compliance with the land use ordinance would result in a particular hardship upon the owner. (Hardship is distinguished from a mere inconvenience or a desire to make more money.) The petitioner must prove according to that:

1. 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;
2. There are special circumstances attached to the property that do not generally apply to other properties in the same zone;
3. Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zone;
4. The variance will not substantially affect the general plan and will not be contrary to the public interest; and
5. The spirit of the land use ordinance is observed and substantial justice done.

The appeal authority may not find an unreasonable hardship unless the alleged hardship:

1. Is located on or associated with the property for which the variance is sought; and
2. Comes from circumstances peculiar to the property, not from conditions that are general to the neighborhood.

In determining whether or not enforcement of the land use ordinance would cause unreasonable hardship, the appeal authority may not find an unreasonable hardship if the hardship is self-imposed or economic. In determining whether or not there are special circumstances attached to the property, the appeal authority may find that special circumstances exist only if the special circumstances:

1. Relate to the hardship complained of; and
2. Deprive the property of privileges granted to other properties in the same zone.

Generally, a variance process is designed to prevent a regulatory "taking" of private property. However, because a variance allows the applicant to circumvent the zoning laws of the jurisdiction, the applicant has the burden of proving that all of the conditions justifying a variance have been met.

Once granted, variances run with the land, meaning that the right to the variance is transferred from owner to owner over time.

Because variances are designed to alleviate the physical restraints of zoning in certain circumstances, they are not available to allow a use that is not contemplated in the zone. In granting a variance, the appeal authority may impose additional requirements on the applicant that will:

1. Mitigate any harmful effects of the variance; or
2. Serve the purpose of the standard or requirement that is waived or modified.

Only the appeal authority is vested with the authority to grant variances. The appeal authority could be different for each land use application if the municipality chooses. The appeal authority may not be the same person or board that took final action on the land use application. Any appeal of the decision must be made to the district courts. There is no legal way to grant a variance that would change the use of a piece of property. Use variances are not allowed.

5.8 Checklist | Variances

- ☐ 1. Determine that a variance from the strict application of the land use ordinance could be appropriate for the physical circumstances involved with a potential application. Use variances are not allowed.
- ☐ 2. Determine that the variance application is sufficiently complete for consideration.
- ☐ 3. Determine that the variance fee has been paid.
- ☐ 4. Place the item on an agenda for the appeal authority.
- ☐ 5. Provide the required notice of a meeting to consider the application. (See Checklist 5.9 item 5.) A public hearing is not required by state law, but may be required by local ordinance. (See Checklist 5.9) If the appeal authority is composed of a board or commission that includes more than one person, then notify the members of the appeal authority of the meeting.
- ☐ 6. Review standards in the local land use ordinance and state law (10-9a-702) that apply to the consideration of a variance. They are stated in item 10 of this checklist.
- ☐ 7. Verify that the appeal authority is impartial and free of bias from conflicts of interest with regard to the matter before it.
- ☐ 8. Conduct the meeting, or a public hearing if required by local ordinance as part of the consideration of the variance application. A public hearing is not required by state law.
- ☐ 9. Act in a quasi-judicial manner and gather evidence impartially. Afford the applicant due process, which includes the rights of notice, to be heard, to confront witnesses, and to respond to evidence submitted by others. This includes the restriction of ex-parte communications between any member of the appeal authority and any individual wishing to discuss the appeal. All information must be made available to all members of the appeal authority as well as both the appellant and appellee. This allows both sides the opportunity to confront witnesses and respond to evidence submitted by others.

Continued

5.8 Checklist | Variances, *Continued*

☐ 10. Deliberate. Since an appeal authority is a quasi-judicial body, its deliberations may be conducted in private. Consider evidence that is before the appeal authority that is both relevant and credible related to the proposed variance. After considering the standards and the evidence, determine if the applicant has met his or her burden to establish by substantial evidence each of the required findings:

- ☐ a. 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. An unreasonable hardship can only be found when the alleged hardship:
  - ☐ i. Is located on or associated with the property and not from conditions that are general to the neighborhood;
  - ☐ ii. Comes from circumstances peculiar to the property, and not from conditions that are general to the neighborhood;
  - ☐ iii. Is not self-imposed;
  - ☐ iv. Is not primarily economic, although there may be an economic loss tied to the special circumstances of the property; and
- ☐ b. There are special circumstances attached to the property that do not generally apply to other properties in the same zone. The appeal authority may find that special circumstances exist only if the special circumstances:
  - ☐ i. Relate to the hardship complained of; conditions that are general to the neighborhood;
  - ☐ ii. Deprive the property owner of privileges granted to other properties in the same zone; and conditions that are general to the neighborhood;
  - ☐ iii. Are not simply common differences between the property and others in the area.
- ☐ c. Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zone; and
- ☐ d. The variance will not substantially affect the general plan and will not be contrary to the public interest; and
- ☐ e. The spirit of the land use ordinance is observed and substantial justice done.

Continued

☐ 11. If, in the opinion of the appeal authority:

- ☐ a. The applicant has provided substantial evidence in the record to support all five of the required findings, and there is no substantial evidence to the contrary, approve the variance.
- ☐ b. The applicant has failed to provide substantial evidence in the record to support any one of the five required findings, deny the variance.

☐ 12. Support the action of the appeal authority with evidence in the record, identifying the evidence that the appeal authority relied upon in its decision. The decision must be supported by substantial evidence in the record and not solely by public clamor.

☐ 13. Preserve the record of the proceedings to document the law and evidence that was considered by the appeal authority before it made a decision related to the application. Remember, any appeal of the decision is to district court.

Notes and Practice Tips

The action taken by an appeal authority is legal only if it is supported by substantial evidence in the record. "Substantial evidence" is evidence that is relevant and credible. To be relevant, it must relate to the standards in the ordinance and state law related to the review of applications for variances. To be credible, it must be objective and independent.

Public clamor is not substantial evidence. Evidence is independent—it stands on its own and is not based on public opinion. For the average person, either participating in a land use decision as a member of the appeal authority or as a citizen, his opinion is not evidence. Evidence is the justification—the facts—that are the basis for the opinion.

5.9 Checklist | Conducting a Public Hearing

This checklist lays out public hearing requirements where such proceedings are either required or desired. (Note: Statutory hearing requirements for specific land use processes are covered in the individual checklists above)

- ☐ 1. Determine if a public hearing is required by local ordinance or state statute.
- ☐ 2. Prepare an agenda with reasonable specificity of the topics to be considered. List each topic as a separate agenda item.
- ☐ 3. Provide public notice of the hearing at least 10 days prior to the hearing the date, time, agenda:
  - ☐ a. mailed to affected entities (see definitions); and
  - ☐ b. posted;
    - ☐ i. in at least three public locations in the municipality; or
    - ☐ ii. on the municipalities official website; and
  - ☐ c. published or mailed
    - ☐ i. published
      - ☐ A. in a newspaper of general circulation; or
      - ☐ B. on the Utah Public Notice Website
    - ☐ ii. mailed to:
      - ☐ A. mailed to each property owner who is directly affected by the land use action; and
      - ☐ B. each adjacent property owner specified by municipal ordinance including those in other jurisdictions.
- ☐ 4. Make an audio or video recording of the meeting from beginning to end.
- ☐ 5. The presiding officer should make a statement at the beginning of the hearing identifying the date, time, and place of the hearing for the tape.
- ☐ 6. Allow any member of the public to also make an audio or video recording of the hearing, so long as the recording does not interfere with the conduct of the hearing.

continued

5.9 Checklist | Conducting a Public Hearing, *Continued*

- ☐ 7. Do not discuss any item not on the agenda unless the item is:
  - ☐ a. Raised up by a member of the public; and
  - ☐ b. Allowed by the presiding officer of the public body.
- ☐ 8. Provide an appropriate opportunity to hear from members of the public. Those with a protected property interest in the subject of the hearing must be afforded due process. You may not unreasonably limit the time that a person with due process rights may speak and must allow adequate time and opportunity for him or her to respond to evidence presented by others.
- ☐ 9. Do not take action on any item not on the agenda.
- ☐ 10. Prepare written minutes of the meeting that include:
  - ☐ a. The date, time, and place of the hearing;
  - ☐ b. The names of the members present and absent;
  - ☐ c. The substance of all matters proposed, discussed, or decided, which may include a summary of comments made by members of the public body;
  - ☐ d. A record, by individual member, of each vote taken;.
  - ☐ e. The name of each person recognized by the presiding member of the public body to provide testimony or comments;.
  - ☐ f. The substance, in brief, of the testimony or comments provided by the public; and
  - ☐ g. Any other information that any member requests be entered in the minutes or recording.
- ☐ 11. Issue a written order or finding discussing the result of the hearing including any evidence which supports the decisions rendered and conclusions reached.
- ☐ 12. Make the recording and minutes of the hearing available to the public within a reasonable time after the hearing.
- ☐ 13. Preserve the tape recording as a permanent record in complete and unedited form.

5.10 Open and Public Meetings

The business of the public must be conducted in open and public meetings of which the public has been notified and to which the public is invited. Any body of two or more individuals with the authority to make decisions on behalf of the public is subject to the Open and Public Meetings Act. The land use authority may, in certain circumstances, be a single individual. However, more often, it is the planning commission or the council.

Generally speaking, open and public meetings are required whenever a "quorum" of the body meets. A quorum is a majority of the appointed or elected members of the body (for example: three of five members).

5.10 Checklist | Conducting an Open Meeting

- ☐ 1. Determine if the entity holding a meeting is a "public body" which consists of two or more persons, who:
  - ☐ a. Are part of a body created by rule, ordinance, or resolution; and
  - ☐ b. Expend, disburse, or is supported in whole or in part by tax revenue; and
  - ☐ c. Are vested with the authority to make decisions regarding the public's business.
- ☐ 2. Determine if the entity is holding a "public meeting." A public meeting is in the presence of a quorum or majority of the members of a public body who meet for the purpose of discussing, receiving comments from the public about, or acting upon a matter over which they have jurisdiction. (A public meeting is not a chance meeting or a social gathering.)
- ☐ 3. Determine if a quorum (majority of the appointed or elected officials) is present. If not, the meeting cannot take place.
- ☐ 4. Prepare an agenda with reasonable specificity of the topics to be considered. List each topic as a separate agenda item.
- ☐ 5. Place a public notice of the meeting 24 hours in advance, including the date, time, place, and agenda of the meeting.
  - ☐ a. At the principal office of the public body, or, if there is no principal office, at the building where the meeting is to be held; and
  - ☐ b. By providing notice to at least one newspaper of general circulation within the jurisdiction of the public body or a local media correspondent; and
  - ☐ c. For public bodies associated with a municipality with an annual budget of more than $1 million, on the Utah Public Meeting Notice website.
- ☐ 6. Make an audio or video recording of the meeting from beginning to end.
- ☐ 7. The presiding officer should make a statement at the beginning of the meeting identifying the date, time, and place of the meeting for the tape.
- ☐ 8. Allow any member of the public to also make an audio or video recording of the meeting, so long as the recording does not interfere with the conduct of the meeting.

Continued

5.10 Checklist | Conducting an Open Meeting, Continued

- ☐ 9. Do not discuss any item not on the agenda unless the item is:
  - ☐ a. Raised up by a member of the public; and
  - ☐ b. Allowed by the presiding officer of the public body.
- ☐ 10. Do not take action on any item not on the agenda.
- ☐ 11. Prepare written minutes of the meeting that include:
  - ☐ a. The date, time, and place of the meeting;
  - ☐ b. The names of the members present and absent;
  - ☐ c. The substance of all matters proposed, discussed, or decided, which may include a summary of comments made by members of the public body;
  - ☐ d. A record, by individual member, of each vote taken;.
  - ☐ e. The name of each person recognized by the presiding member of the public body to provide testimony or comments;
  - ☐ f. The substance, in brief, of the testimony or comments provided by the public; and
  - ☐ g. Any other information that any member requests be entered in the minutes or recording.
- ☐ 12. Make the recording and minutes of the open meeting available to the public within a reasonable time after the meeting.
- ☐ 13. Preserve the tape recording as a permanent record in complete and unedited form.

Notes and Practice Tips

Remember, you are conducting the public's business and proceed accordingly. Open, effective communication is not only required but can go a long way to ensuring positive relations between the municipality and the community.

5.11 Checklist | Conducting an Electronic Meeting

In addition to the normal procedures required for public meetings

- ☐ 1. Adopt a resolution, rule, or ordinance establishing procedures, limitations, and conditions governing electronic meetings.
- ☐ 2. Prepare an agenda with reasonable specificity of the topics to be considered, as one would for any public meeting. Indicate
- ☐ 3. Provide applicants, if any, with staff reports 3 days prior to any meeting. on the agenda that the public body may also conduct an electronic meeting.
- ☐ 4. Place a public notice of the meeting 24 hours in advance, including the date, time, place, and agenda of the meeting:
  - ☐ a. At the principal office of the public body, at the location where the public body would normally meet if not holding an electronic meeting, and at one or more anchor locations (these may all be the same location); and
  - ☐ b. By providing notice to at least one newspaper of general circulation within the jurisdiction of the public body or a local media correspondent; and
  - ☐ c. For public bodies associated with a municipality with an annual budget of more than $1 million, on the Utah Public Meeting Notice website.
- ☐ 5. Notify the members of the public body 24 hours in advance that they may participate electronically and provide a description of how the members will be connected to the electronic meeting.
- ☐ 6. Provide space and facilities at the anchor location so that interested persons and the public may attend and monitor the open portions of the meeting.
- ☐ 7. Arrange for comments from the public, if accepted, for open portions of the meeting.
- ☐ 8. Follow the normal procedures for recordings, minutes, and other aspects of open and closed meetings.

Notes and Practice Tips

Remember, although you may be on the phone or typing email, you are conducting the public's business and proceed accordingly.

5.12 Closed Meetings

A public body may "close" an open and public meeting under limited circumstances to discuss:

1. The character, professional competence, or physical or mental health of an individual;
2. To strategize with respect to collective bargaining;
3. To discuss pending or reasonably imminent litigation;
4. To discuss land sale or acquisition; or
5. To deliberate as an appeal authority.

Closed meetings are highly regulated.

5.12 Checklist | Conducting a Closed Meeting

☐ 1. Determine if the entity holding a meeting is a "public body" which consists of two or more persons who:

- ☐ a. Are part of a body created by rule, ordinance, or resolution; and
- ☐ b. Expend, disburse, or is supported in whole or in part by tax revenue; and
- ☐ c. Are vested with the authority to make decisions regarding the public's business.

☐ 2. Determine if the entity is holding a "public meeting." A public meeting is in the presence of a quorum or majority of the members of a public body who meet for the purpose of discussing, receiving comments from the public about, or acting upon a matter over which they have jurisdiction. (A public meeting is not a chance meeting or a social gathering.)

☐ 3. Prepare an agenda with reasonable specificity of the topics to be considered. List each topic as a separate agenda item. Indicate on the agenda that the public body may also conduct a closed meeting and generally state the topic of the closed meeting, but do not provide a statement that violates the confidential purpose of the closed meeting. The location of the closed meeting must be announced.

☐ 4. Place a public notice of the meeting 24 hours in advance, including the date, time, place, and agenda of the meeting:

- ☐ a. At the principal office of the public body, or, if there is no principal office, at the building where the meeting is to be held; and
- ☐ b. By providing notice to at least one newspaper of general circulation within the jurisdiction of the public body or a local media correspondent; and
- ☐ c. For public bodies associated with a municipality with an annual budget of more than $1 million, on the Utah Public Meeting Notice website.

☐ 5. For all but discussions of the character and competence of an individual, make an audio or video recording of the closed meeting from beginning to end. If discussing character and competence, the presiding authority must make a sworn statement that this is the only purpose for the closed meeting.

Continued

5.12 Checklist | Conducting a Closed Meeting, *Continued*

☐ 6. The presiding officer should make a statement at the beginning of the meeting identifying the date, time, and place of the meeting for the tape.

☐ 7. Allow any member of the public to also make an audio or video recording of the open portion of the meeting, so long as the recording does not interfere with the conduct of the meeting.

☐ 8. During the open meeting, a member of the public body must make a motion to close the public meeting:

- ☐ a. The motion should state the specific justification for the closed meeting by citing one of the purposes provided for in statute. A closed meeting is only justified to discuss:
  - i. The character, professional competence, or physical or mental health of an individual;
  - ii. Strategy sessions to discuss collective bargaining;
  - iii. Strategy sessions to discuss pending or reasonably imminent litigation;
  - iv. Strategy sessions to discuss the purchase, exchange, or lease of real property if public discussion of the transaction would:
    - A. Disclose the appraisal or estimated value of the property under consideration; or
    - B. Prevent the public body from completing the transaction on the best possible terms;
  - v. Strategy sessions to discuss the sale of real property if public discussion of the transaction would:
    - A. Disclose the appraisal or estimated value of the property under consideration; or
    - B. Prevent the public body from completing the transaction on the best possible terms;
  - vi. Discussion regarding deployment of security personnel, devices, or systems;
  - vii. Investigative proceedings regarding allegations of criminal misconduct; and

Continued

5.12 Checklist | Conducting a Closed Meeting, *Continued*

viii. Discussion by a county legislative body of commercial information as defined in 59-1-404;

ix. Discussions and evaluations related to the procurement code.

☐ b. The presiding officer must then ask for a vote to approve the holding of a closed meeting;

☐ c. Two-thirds of the public body must vote to approve closing the meeting or it cannot be closed;

☐ d. The vote of each person for or against holding the closed meeting is to be noted in the minutes of the open meeting.

☐ 9. For all but personnel discussions, make an unedited audio or video recording of the entire meeting, from beginning to end.

☐ a. The date, time, and place of the meeting;

☐ b. The names of members present and absent; and

☐ c. The names of all others present except where the disclosure would infringe on the confidentiality necessary to fulfill the original purpose of the closed meeting;

☐ d. Written minutes of a closed meeting are optional.

☐ 10. During the closed meeting:

☐ a. Only discuss matters that are allowed as topics of a closed meeting; and

☐ b. No official vote taking any action may be conducted in a closed meeting. No ordinance, resolution, rule, regulation, contract, or appointment can be officially approved in a closed meeting.

☐ 11. At the end of the closed meeting, adjourn the public body, or go back into a public meeting and finish the public meeting in the normal manner. If an official action is to be taken, adjourn the closed meeting and reconvene in the public meeting before taking a motion and conducting a vote on the action.

Continued

5.12 Checklist | Conducting a Closed Meeting, *Continued*

- ☐ 12. Prepare written minutes of the open portion of the meeting that include:
  - ☐ a. The date, time, and place of the meeting;
  - ☐ b. The names of the members present and absent;
  - ☐ c. The substance of all matters proposed, discussed, or decided in the public portion of the meeting, which may include a summary of comments made by members of the public body;
  - ☐ d. A record, by individual member, of each vote taken;
  - ☐ e. The name of each person recognized by the presiding member of the public body to provide testimony or comments;
  - ☐ f. The substance, in brief, of the testimony or comments provided by the public; and
  - ☐ g. Any other information that any member requests be entered in the minutes or recording.
- ☐ 13. Make the recording and minutes of the open meeting available to the public within a reasonable time after the meeting.
- ☐ 14. Preserve the recording of the closed meeting, and minutes (if prepared) as a protected record under the GRAMA statute. The recording and minutes (if prepared) are only to be disposed of in conformity with the approved records retention schedule adopted by the municipality and approved by the appropriate state authorities. The recording and minutes (if prepared) are available to the court if litigation is filed and access to the record of the closed meeting is requested.

Notes and Practice Tips

Closed Meeting–Purposes. Purposes of a closed meeting:

1. **Individuals.** Discussion of the character, professional competence, or physical or mental health of an individual. 52-4-205(1)(a) But only if the person presiding signs a sworn statement affirming that the sole purpose for closing the meeting was for this purpose. No recording need be made of a closed meeting held for this purpose; 52-4-206(6)
2. **Collective Bargaining.** Strategy sessions to discuss collective bargaining; 52-4-205(1)(b)
3. **Litigation.** Strategy sessions to discuss pending or reasonably imminent litigation; 52-4-205(1)(c)
4. **Purchase of Property.** Strategy sessions to discuss the purchase, exchange, or lease of real property, but only if public discussion would:
    a. Disclose the appraisal or estimated value of the property under consideration; or
    b. Prevent the public body from completing the transaction on the best possible terms; 52-4-205(1)(d)
5. **Sale of Property.** Strategy sessions to discuss the sale of real property if public discussion of the transaction would:
    a. Disclose the appraisal or estimated value of the property under consideration; or
    b. Prevent the public body from completing the transaction on the best possible terms; and
    c. The public body previously gave public notice that the property would be offered for sale; and
    d. The terms of the sale are publicly disclosed before the public body approves the sale; 52-4-205(1)(e)
6. **Security.** Discussion regarding deployment of security personnel, devices or systems; 52-4-205(1)(f), but only if the person presiding signs a sworn statement affirming that the sole purpose for closing the meeting was for this purpose. No recording need be made of a closed meeting held for this purpose; 52-4-206(6)
7. **Criminality.** Investigative proceedings regarding allegations of criminal misconduct; 52-4-205(1)(g)

8. **Procurement Code.** Certain activities involved in local procurement procedures. 52-4-205(l)(m) and (n)

9. **Quasi-Judicial Deliberations.** A public body acting in a quasi-judicial manner may deliberate behind closed doors. In the land use context, this would apply to an appeal authority, which acts in a quasi-judicial manner 10-9a-701(3)(a)(i), which therefore may exclude the public from its deliberations much as a jury would when making a decision about the facts or law of a given matter. Other public bodies acting in a judicial manner also qualify for this exception to the Open and Public Meetings Act. It is important to note, however, that the information gathering phase of a quasi-judicial process must take place in an open meeting. *Dairy Product Services v. Wellsvill*e, 2000 UT 81, ¶ 60

STATUTES 1 | Municipal Land Use, Development, and Management Act – 2016

Chapter 10-9a, Utah Code Ann. Municipal Land Use, Development, and Management Act

10-9a-101 Title.

This chapter is known as the "Municipal Land Use, Development, and Management Act."

Renumbered and Amended by Chapter 254, 2005 General Session

10-9a-102 Purposes -- General land use authority.

(1) The purposes of this chapter are 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 inhabitants and businesses, to protect the tax base, to secure economy in governmental expenditures, to foster the state's agricultural and other industries, to protect both urban and nonurban development, to protect and ensure access to sunlight for solar energy devices, to provide fundamental fairness in land use regulation, and to protect property values.

(2) To accomplish the purposes of this chapter, municipalities may enact all ordinances, resolutions, and rules and may enter into other forms of land use controls and development agreements that they consider necessary or appropriate for the use and development of land within the municipality, including ordinances, resolutions, rules, restrictive covenants, easements, and development agreements governing uses, density, open spaces, structures, buildings, energy efficiency, light and air, air quality, transportation and public or alternative transportation, infrastructure, street and building orientation and width requirements, public facilities, fundamental fairness in land use regulation, considerations of surrounding land uses and the balance of the foregoing purposes with a landowner's private property interests, height and location of vegetation, trees, and landscaping, unless expressly prohibited by law.

Amended by Chapter 363, 2007 General Session

10-9a-103 Definitions.

As used in this chapter:

(1) **"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.

(2) **"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.

(3) **"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.

(4)

(a) **"Charter school"** means:

(i) an operating charter school;

(ii) a charter school applicant that has its application approved by a charter school authorizer in accordance with Title 53A, Chapter 1a, Part 5, The Utah Charter Schools Act; 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.

(5) **"Conditional use"** means a land use that, because of its unique characteristics or potential impact 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.

(6) **"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.

(7) **"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.

(8) **"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.

(9)

(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.

(10) **"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 (10)(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 (10)(a)(i); and

(B) used in support of the purposes of a building described in Subsection (10)(a)(i); or

(ii) a therapeutic school.

(11) **"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.

(12) **"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.

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

(14) **"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.

(15) **"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.

(16) **"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.

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

(18) **"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.

(19) "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.

(20) **"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.

(21) **"Infrastructure improvement"** means permanent infrastructure that an applicant must install:

(a) pursuant to published installation and inspection specifications for public improvements; and

(b) as a condition of:

(i) recording a subdivision plat; or

(ii) development of a commercial, industrial, mixed use, condominium, or multifamily project.

(22) **"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.

(23) **"Land use application"** means an application required by a municipality's land use ordinance.

(24) **"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.

(25) **"Land use ordinance"** means a planning, zoning, development, or subdivision ordinance of the municipality, but does not include the general plan.

(26) **"Land use permit"** means a permit issued by a land use authority.

(27) **"Legislative body"** means the municipal council.

(28) **"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.

(29) **"Lot line adjustment"** means the relocation of the property boundary line in a subdivision between two adjoining lots with the consent of the owners of record.

(30) **"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.

(31) **"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.

(32) **"Noncomplying structure"** means a structure that:

(a) legally existed before its 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.

(33) **"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.

(34) **"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.

(35) **"Parcel boundary adjustment"** means a recorded agreement between owners of adjoining properties adjusting their mutual boundary if:
(a) no additional parcel is created; and
(b) each property identified in the agreement is unsubdivided land, including a remainder of subdivided land.

(36) **"Person"** means an individual, corporation, partnership, organization, association, trust, governmental agency, or any other legal entity.

(37) **"Plan for moderate income housing"** means a written document adopted by a city legislative body that includes:
(a) an estimate of the existing supply of moderate income housing located within the city;
(b) an estimate of the need for moderate income housing in the city for the next five years as revised biennially;
(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 city's program to encourage an adequate supply of moderate income housing.

(38) **"Plat"** means a map or other graphical representation of lands being laid out and prepared in accordance with Section 10-9a-603, 17-23-17, or 57-8-13.

(39) **"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.

(40) **"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.

(41) **"Public hearing"** means a hearing at which members of the public are provided a reasonable opportunity to comment on the subject of the hearing.

(42) **"Public meeting"** means a meeting that is required to be open to the public under Title 52, Chapter 4, Open and Public Meetings Act.

(43) **"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.

(44) **"Record of survey map"** means a map of a survey of land prepared in accordance with Section 17-23-17.

(45) **"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.

(46) **"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.

(47) **"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.

(48) **"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.

(49) **"Specified public agency"** means:

(a) the state;

(b) a school district; or

(c) a charter school.

(50) **"Specified public utility"** means an electrical corporation, gas corporation, or telephone corporation, as those terms are defined in Section 54-2-1.

(51) **"State"** includes any department, division, or agency of the state.

(52) **"Street"** means a public right-of-way, including a highway, avenue, boulevard, parkway, road, lane, walk, alley, viaduct, subway, tunnel, bridge, public easement, or other way.

(53)

(a) **"Subdivision"** means any land that is divided, resubdivided or proposed to be divided into two or more lots, parcels, sites, units, plots, 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; and

(ii) except as provided in Subsection (53)(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 recorded agreement between owners of adjoining unsubdivided properties adjusting their mutual boundary if:

(A) no new lot is created; and

(B) the adjustment does not violate applicable land use ordinances;

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

(A) revising the legal description of more than one contiguous unsubdivided parcel of property into one legal description encompassing all such parcels of property; or

(B) joining a subdivided parcel of property to another parcel of property that has not been subdivided, if the joinder does not violate applicable land use ordinances;

(iv) a recorded agreement between owners of adjoining subdivided properties adjusting their mutual boundary 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 or partition of land by deed or other instrument where the land use authority expressly approves in writing the division in anticipation of further land use approvals on the parcel or parcels; or

(vi) a parcel boundary adjustment.

(d) The joining of a subdivided parcel of property to another parcel of property that has not been subdivided does not constitute a subdivision under this Subsection (53) as to the unsubdivided parcel of property or subject the unsubdivided parcel to the municipality's subdivision ordinance.

(54) **"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.

(55) **"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.

(56) **"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.

(57) **"Unincorporated"** means the area outside of the incorporated area of a city or town.

(58) **"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.

(59) **"Zoning map"** means a map, adopted as part of a land use ordinance, that depicts land use zones, overlays, or districts.

10-9a-104 Stricter requirements.

(1) Except as provided in Subsection (2), a municipality may enact an ordinance imposing stricter requirements or higher standards than are required by this chapter.

(2) A municipality may not impose stricter requirements or higher standards than are required by:

(a) Section 10-9a-305; and

(b) Section 10-9a-514.

Part 2
Notice

10-9a-201 Required notice.

(1) At a minimum, each municipality shall provide actual notice or the notice required by this part.

(2) A municipality may by ordinance require greater notice than required under this part.

10-9a-202 Applicant notice -- Waiver of requirements.

(1) For each land use application, the municipality shall:

(a) notify the applicant of the date, time, and place of each public hearing and public meeting to consider the application;

(b) provide to each applicant a copy of each staff

report regarding the applicant or the pending application at least three business days before the public hearing or public meeting; and

(c) notify the applicant of any final action on a pending application.

(2) If a municipality fails to comply with the requirements of Subsection (1)(a) or (b) or both, an applicant may waive the failure so that the application may stay on the public hearing or public meeting agenda and be considered as if the requirements had been met.

Amended by Chapter 257, 2006 General Session

10-9a-203 Notice of intent to prepare a general plan or comprehensive general plan amendments in certain municipalities.

(1) Before preparing a proposed general plan or a comprehensive general plan amendment, each municipality within a county of the first or second class shall provide 10 calendar days notice of its intent to prepare a proposed general plan or a comprehensive general plan amendment:

(a) to each affected entity;

(b) to the Automated Geographic Reference Center created in Section 63F-1-506;

(c) to the association of governments, established pursuant to an interlocal agreement under Title 11, Chapter 13, Interlocal Cooperation Act, of which the municipality is a member; and

(d) on the Utah Public Notice Website created under Section 63F-1-701.

(2) Each notice under Subsection (1) shall:

(a) indicate that the municipality intends to prepare a general plan or a comprehensive general plan amendment, as the case may be;

(b) describe or provide a map of the geographic area that will be affected by the general plan or amendment;

(c) be sent by mail, e-mail, or other effective means;

(d) invite the affected entities to provide information for the municipality to consider in the process of preparing, adopting, and implementing a general plan or amendment concerning:

(i) impacts that the use of land proposed in the proposed general plan or amendment may have; and

(ii) uses of land within the municipality that the affected entity is considering that may conflict with the proposed general plan or amendment; and

(e) include the address of an Internet website, if the municipality has one, and the name and telephone number of a person where more information can be obtained concerning the municipality's proposed general plan or amendment.

Amended by Chapter 202, 2015 General Session

10-9a-204 Notice of public hearings and public meetings to consider general plan or modifications.

(1) Each municipality shall provide:

(a) notice of the date, time, and place of the first public hearing to consider the original adoption or any modification of all or any portion of a general plan; and

(b) notice of each public meeting on the subject.

(2) Each notice of a public hearing under Subsection (1)(a) shall be at least 10 calendar days before the public hearing and shall be:

(a)

(i) published in a newspaper of general circulation in the area; and

(ii) published on the Utah Public Notice Website created in Section 63F-1-701;

(b) mailed to each affected entity; and

(c) posted:

(i) in at least three public locations within the municipality; or

(ii) on the municipality's official website.

(3) Each notice of a public meeting under

Subsection (1)(b) shall be at least 24 hours before the meeting and shall be:
(a)
(i) submitted to a newspaper of general circulation in the area; and
(ii) published on the Utah Public Notice Website created in Section 63F-1-701; and
(b) posted:
(i) in at least three public locations within the municipality; or
(ii) on the municipality's official website.

Amended by Chapter 90, 2010 General Session

10-9a-205 Notice of public hearings and public meetings on adoption or modification of land use ordinance.
(1) Each municipality shall give:
(a) notice of the date, time, and place of the first public hearing to consider the adoption or any modification of a land use ordinance; and
(b) notice of each public meeting on the subject.
(2) Each notice of a public hearing under Subsection (1)(a) shall be:
(a) mailed to each affected entity at least 10 calendar days before the public hearing;
(b) posted:
(i) in at least three public locations within the municipality; or
(ii) on the municipality's official website; and
(c)
(i)
(A) published in a newspaper of general circulation in the area at least 10 calendar days before the public hearing; and
(B) published on the Utah Public Notice Website created in Section 63F-1-701, at least 10 calendar days before the public hearing; or
(ii) mailed at least 10 days before the public hearing to:
(A) each property owner whose land is directly affected by the land use ordinance change; and
(B) each adjacent property owner within the parameters specified by municipal ordinance.
(3) Each notice of a public meeting under Subsection (1)(b) shall be at least 24 hours before the meeting and shall be posted:
(a) in at least three public locations within the municipality; or
(b) on the municipality's official website.
(4)
(a) If a municipality plans to hold a public hearing in accordance with Section 10-9a-502 to adopt a zoning map or map amendment, the municipality shall send a courtesy notice to each owner of private real property whose property is located entirely or partially within the proposed map at least 10 days prior to the scheduled day of the public hearing.
(b) The notice shall:
(i) identify with specificity each owner of record of real property that will be affected by the proposed zoning map or map amendments;
(ii) state the current zone in which the real property is located;
(iii) state the proposed new zone for the real property;
(iv) provide information regarding or a reference to the proposed regulations, prohibitions, and permitted uses that the property will be subject to if the zoning map or map amendment is adopted;
(v) state that the owner of real property may no later than 10 days after the day of the first public hearing file a written objection to the inclusion of the owner's property in the proposed zoning map or map amendment;
(vi) state the address where the property owner should file the protest;
(vii) notify the property owner that each written objection filed with the municipality will be provided to the municipal legislative body; and

(viii) state the location, date, and time of the public hearing described in Section 10-9a-502.

(c) If a municipality mails notice to a property owner in accordance with Subsection (2)(c)(ii) for a public hearing on a zoning map or map amendment, the notice required in this Subsection (4) may be included in or part of the notice described in Subsection (2)(c)(ii) rather than sent separately.

Amended by Chapter 324, 2013 General Session

10-9a-206 Third party notice.

(1) If a municipality requires notice to adjacent property owners, the municipality shall:

(a) mail notice to the record owner of each parcel within parameters specified by municipal ordinance; or

(b) post notice on the property with a sign of sufficient size, durability, print quality, and location that is reasonably calculated to give notice to passers-by.

(2) If a municipality mails notice to third party property owners under Subsection (1), it shall mail equivalent notice to property owners within an adjacent jurisdiction.

Enacted by Chapter 254, 2005 General Session

10-9a-207 Notice for an amendment to a subdivision -- Notice for vacation of or change to street.

(1)

(a) For an amendment to a subdivision, each municipality shall provide notice of the date, time, and place of at least one public meeting, as provided in Subsection (1)(b).

(b) At least 10 calendar days before the public meeting, the notice required under Subsection (1)(a) shall be:

(i) mailed and addressed to the record owner of each parcel within specified parameters of that property; or

(ii) posted on the property proposed for subdivision, in a visible location, with a sign of sufficient size, durability, and print quality that is reasonably calculated to give notice to passers-by.

(2) Each municipality shall provide notice as required by Section 10-9a-208 for a subdivision that involves a vacation, alteration, or amendment of a street.

Amended by Chapter 338, 2009 General Session

10-9a-208 Hearing and notice for proposal to vacate a public street, right-of-way, or easement.

(1) For any proposal to vacate some or all of a public street, right-of-way, or easement, the legislative body shall:

(a) hold a public hearing; and

(b) give notice of the date, place, and time of the hearing, as provided in Subsection (2).

(2) At least 10 days before the public hearing under Subsection (1)(a), the notice required under Subsection (1)(b) shall be:

(a) mailed to the record owner of each parcel that is accessed by the public street, right-of-way, or easement;

(b) mailed to each affected entity;

(c) posted on or near the street, right-of-way, or easement in a manner that is calculated to alert the public; and

(d)

(i) published in a newspaper of general circulation in the municipality in which the land subject to the petition is located; and

(ii) published on the Utah Public Notice Website created in Section 63F-1-701.

Amended by Chapter 90, 2010 General Session

10-9a-209 Notice challenge.

If notice given under authority of this part is not challenged under Section 10-9a-801 within 30

days after the meeting or action for which notice is given, the notice is considered adequate and proper.

Enacted by Chapter 254, 2005 General Session

10-9a-210 Notice to municipality when a private institution of higher education is constructing student housing.

(1) Each private institution of higher education that intends to construct student housing on property owned by the institution shall provide written notice of the intended construction, as provided in Subsection (2), before any funds are committed to the construction, if any of the proposed student housing buildings is within 300 feet of privately owned residential property.

(2) Each notice under Subsection (1) shall be provided to the legislative body and, if applicable, the mayor of:

(a) the county in whose unincorporated area the privately owned residential property is located; or

(b) the municipality in whose boundaries the privately owned residential property is located.

(3) At the request of a county or municipality that is entitled to notice under this section, the institution and the legislative body of the affected county or municipality shall jointly hold a public hearing to provide information to the public and receive input from the public about the proposed construction.

Enacted by Chapter 231, 2005 General Session

10-9a-211 Canal owner or operator -- Notice to municipality.

(1) For purposes of Subsection 10-9a-509(1)(b)(iv), a canal company or a canal operator shall provide on or before July 1, 2010, any municipality in which the canal company or canal operator owns or operates a canal:

(a) a current mailing address and phone number;

(b) a contact name; and

(c) a general description of the location of each canal owned or operated by the canal owner or canal operator.

(2) If the information described in Subsection (1) changes after a canal company or a canal operator has provided the information to the municipality, the canal company or canal operator shall provide the correct information within 30 days of the day on which the information was changed.

Enacted by Chapter 332, 2010 General Session

10-9a-212 Notice for an amendment to public improvements in a subdivision or development.

Prior to implementing an amendment to adopted specifications for public improvements that apply to subdivision or development, a municipality shall give 30 days mailed notice and an opportunity to comment to anyone who has requested the notice in writing.

Enacted by Chapter 216, 2012 General Session

Part 3
Planning Commission

10-9a-301 Ordinance establishing planning commission required -- Ordinance requirements -- Compensation.

(1)

(a) Each municipality shall enact an ordinance establishing a planning commission.

(b) The ordinance shall define:

(i) the number and terms of the members and, if the municipality chooses, alternate members;

(ii) the mode of appointment;

(iii) the procedures for filling vacancies and removal from office;

(iv) the authority of the planning commission;

(v) subject to Subsection (1)(c), the rules of

order and procedure for use by the planning commission in a public meeting; and
(vi) other details relating to the organization and procedures of the planning commission.
(c) Subsection (1)(b)(v) does not affect the planning commission's duty to comply with Title 52, Chapter 4, Open and Public Meetings Act.
(2) The legislative body may fix per diem compensation for the members of the planning commission, based on necessary and reasonable expenses and on meetings actually attended.

Amended by Chapter 107, 2011 General Session

10-9a-302 Planning commission powers and duties.

The planning commission shall make a recommendation to the legislative body for:
(1) a general plan and amendments to the general plan;
(2) land use ordinances, zoning maps, official maps, and amendments;
(3) an appropriate delegation of power to at least one designated land use authority to hear and act on a land use application;
(4) an appropriate delegation of power to at least one appeal authority to hear and act on an appeal from a decision of the land use authority; and
(5) application processes that:
(a) may include a designation of routine land use matters that, upon application and proper notice, will receive informal streamlined review and action if the application is uncontested; and
(b) shall protect the right of each:
(i) applicant and third party to require formal consideration of any application by a land use authority;
(ii) applicant, adversely affected party, or municipal officer or employee to appeal a land use authority's decision to a separate appeal authority; and
(iii) participant to be heard in each public hearing on a contested application.

Renumbered and Amended by Chapter 254, 2005 General Session

10-9a-303 Entrance upon land.

The municipality may enter upon any land at reasonable times to make examinations and surveys pertinent to the:
(1) preparation of its general plan; or
(2) preparation or enforcement of its land use ordinances.

Renumbered and Amended by Chapter 254, 2005 General Session

10-9a-304 State and federal property -- Mountainous planning district.

Unless otherwise provided by law, nothing contained in this chapter may be construed as giving a municipality jurisdiction over property owned by the state or the United States.

Amended by Chapter 465, 2015 General Session

10-9a-305 Other entities required to conform to municipality's land use ordinances -- Exceptions -- School districts and charter schools -- Submission of development plan and schedule.

(1)
(a) Each county, municipality, school district, charter school, local district, special service district, and political subdivision of the state shall conform to any applicable land use ordinance of any municipality when installing, constructing, operating, or otherwise using any area, land, or building situated within that municipality.
(b) In addition to any other remedies provided by law, when a municipality's land use ordinance is violated or about to be violated by another political subdivision, that municipality may institute an injunction, mandamus, abatement, or

other appropriate action or proceeding to prevent, enjoin, abate, or remove the improper installation, improvement, or use.

(2)

(a) Except as provided in Subsection (3), a school district or charter school is subject to a municipality's land use ordinances.

(b)

(i) Notwithstanding Subsection (3), a municipality may:

(A) subject a charter school to standards within each zone pertaining to setback, height, bulk and massing regulations, off-site parking, curb cut, traffic circulation, and construction staging; and

(B) impose regulations upon the location of a project that are necessary to avoid unreasonable risks to health or safety, as provided in Subsection (3)(f).

(ii) The standards to which a municipality may subject a charter school under Subsection (2)(b)(i) shall be objective standards only and may not be subjective.

(iii) Except as provided in Subsection (7)(d), the only basis upon which a municipality may deny or withhold approval of a charter school's land use application is the charter school's failure to comply with a standard imposed under Subsection (2)(b)(i).

(iv) Nothing in Subsection (2)(b)(iii) may be construed to relieve a charter school of an obligation to comply with a requirement of an applicable building or safety code to which it is otherwise obligated to comply.

(3) A municipality may not:

(a) impose requirements for landscaping, fencing, aesthetic considerations, construction methods or materials, additional building inspections, municipal building codes, building use for educational purposes, or the placement or use of temporary classroom facilities on school property;

(b) except as otherwise provided in this section, require a school district or charter school to participate in the cost of any roadway or sidewalk, or a study on the impact of a school on a roadway or sidewalk, that is not reasonably necessary for the safety of school children and not located on or contiguous to school property, unless the roadway or sidewalk is required to connect an otherwise isolated school site to an existing roadway;

(c) require a district or charter school to pay fees not authorized by this section;

(d) provide for inspection of school construction or assess a fee or other charges for inspection, unless the school district or charter school is unable to provide for inspection by an inspector, other than the project architect or contractor, who is qualified under criteria established by the state superintendent;

(e) require a school district or charter school to pay any impact fee for an improvement project unless the impact fee is imposed as provided in Title 11, Chapter 36a, Impact Fees Act;

(f) impose regulations upon the location of an educational facility except as necessary to avoid unreasonable risks to health or safety; or

(g) for a land use or a structure owned or operated by a school district or charter school that is not an educational facility but is used in support of providing instruction to pupils, impose a regulation that:

(i) is not imposed on a similar land use or structure in the zone in which the land use or structure is approved; or

(ii) uses the tax exempt status of the school district or charter school as criteria for prohibiting or regulating the land use or location of the structure.

(4) Subject to Section 53A-20-108, a school district or charter school shall coordinate the siting of a new school with the municipality in which the school is to be located, to:

(a) avoid or mitigate existing and potential traffic hazards, including consideration of the impacts

between the new school and future highways; and

(b) maximize school, student, and site safety.

(5) Notwithstanding Subsection (3)(d), a municipality may, at its discretion:

(a) provide a walk-through of school construction at no cost and at a time convenient to the district or charter school; and

(b) provide recommendations based upon the walk-through.

(6)

(a) Notwithstanding Subsection (3)(d), a school district or charter school shall use:

(i) a municipal building inspector;

(ii)

(A) for a school district, a school district building inspector from that school district; or

(B) for a charter school, a school district building inspector from the school district in which the charter school is located; or

(iii) an independent, certified building inspector who is:

(A) not an employee of the contractor;

(B) approved by:

(I) a municipal building inspector; or

(II)

(Aa) for a school district, a school district building inspector from that school district; or

(Bb) for a charter school, a school district building inspector from the school district in which the charter school is located; and

(C) licensed to perform the inspection that the inspector is requested to perform.

(b) The approval under Subsection (6)(a)(iii)(B) may not be unreasonably withheld.

(c) If a school district or charter school uses a school district or independent building inspector under Subsection (6)(a)(ii) or (iii), the school district or charter school shall submit to the state superintendent of public instruction and municipal building official, on a monthly basis during construction of the school building, a copy of each inspection certificate regarding the school building.

(7)

(a) A charter school shall be considered a permitted use in all zoning districts within a municipality.

(b) Each land use application for any approval required for a charter school, including an application for a building permit, shall be processed on a first priority basis.

(c) Parking requirements for a charter school may not exceed the minimum parking requirements for schools or other institutional public uses throughout the municipality.

(d) If a municipality has designated zones for a sexually oriented business, or a business which sells alcohol, a charter school may be prohibited from a location which would otherwise defeat the purpose for the zone unless the charter school provides a waiver.

(e)

(i) A school district or a charter school may seek a certificate authorizing permanent occupancy of a school building from:

(A) the state superintendent of public instruction, as provided in Subsection 53A-20-104(3), if the school district or charter school used an independent building inspector for inspection of the school building; or

(B) a municipal official with authority to issue the certificate, if the school district or charter school used a municipal building inspector for inspection of the school building.

(ii) A school district may issue its own certificate authorizing permanent occupancy of a school building if it used its own building inspector for inspection of the school building, subject to the notification requirement of Subsection 53A-20-104(3)(a)(ii).

(iii) A charter school may seek a certificate authorizing permanent occupancy of a school building from a school district official with authority to issue the certificate, if the charter school used a school district building inspector for inspection of the school building.

(iv) A certificate authorizing permanent occupancy issued by the state superintendent of public instruction under Subsection 53A-20-104(3) or a school district official with authority to issue the certificate shall be considered to satisfy any municipal requirement for an inspection or a certificate of occupancy.

(8)

(a) A specified public agency intending to develop its land shall submit to the land use authority a development plan and schedule:

(i) as early as practicable in the development process, but no later than the commencement of construction; and

(ii) with sufficient detail to enable the land use authority to assess:

(A) the specified public agency's compliance with applicable land use ordinances;

(B) the demand for public facilities listed in Subsections 11-36a-102(16)(a), (b), (c), (d), (e), and (g) caused by the development;

(C) the amount of any applicable fee described in Section 10-9a-510;

(D) any credit against an impact fee; and

(E) the potential for waiving an impact fee.

(b) The land use authority shall respond to a specified public agency's submission under Subsection (8)(a) with reasonable promptness in order to allow the specified public agency to consider information the municipality provides under Subsection (8)(a)(ii) in the process of preparing the budget for the development.

(9) Nothing in this section may be construed to:

(a) modify or supersede Section 10-9a-304; or

(b) authorize a municipality to enforce an ordinance in a way, or enact an ordinance, that fails to comply with Title 57, Chapter 21, Utah Fair Housing Act, the federal Fair Housing Amendments Act of 1988, 42 U.S.C. Sec. 3601 et seq., the Americans with Disabilities Act of 1990, 42 U.S.C. 12102, or any other provision of federal law.

Amended by Chapter 200, 2013 General Session

Part 4
General Plan

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.

Renumbered and Amended by Chapter 254, 2005 General Session

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 63G, 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.

Amended by Chapter 382, 2008 General Session

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 shall 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 Workforce Services.

(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.

(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 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.

Amended by Chapter 212, 2012 General Session

10-9a-404 Public hearing by planning commission on proposed general plan or amendment -- Notice -- Revisions to general plan or amendment -- Adoption or rejection by legislative body.
(1)
(a) After completing its recommendation for a proposed general plan, or proposal to amend the general plan, the planning commission shall schedule and hold a public hearing on the proposed plan or amendment.
(b) The planning commission shall provide notice of the public hearing, as required by Section 10-9a-204.
(c) After the public hearing, the planning commission may modify the proposed general plan or amendment.
(2) The planning commission shall forward the proposed general plan or amendment to the legislative body.
(3) The legislative body may make any revisions to the proposed general plan or amendment that it considers appropriate.
(4)
(a) The municipal legislative body may adopt or reject the proposed general plan or amendment either as proposed by the planning commission or after making any revision that the municipal legislative body considers appropriate.
(b) If the municipal legislative body rejects the proposed general plan or amendment, it may provide suggestions to the planning commission for its consideration.
(5) The legislative body shall adopt:
(a) a land use element as provided in Subsection 10-9a-403(2)(a)(i);
(b) a transportation and traffic circulation element as provided in Subsection 10-9a-403(2)(a)(ii); and
(c) for all cities, after considering the factors included in Subsection 10-9a-403(2)(b)(ii), 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.

Renumbered and Amended by Chapter 254, 2005 General Session

10-9a-405 Effect of general plan.

Except as provided in Section 10-9a-406, the general plan is an advisory guide for land use decisions, the impact of which shall be determined by ordinance.

Enacted by Chapter 254, 2005 General Session

10-9a-406 Public uses to conform to general plan.

After the legislative body has adopted a general plan, no street, park, or other public way, ground, place, or space, no publicly owned building or structure, and no public utility, whether publicly or privately owned, may be constructed or authorized until and unless it conforms to the current general plan.

Renumbered and Amended by Chapter 254, 2005 General Session

10-9a-407 Effect of official maps.
(1) Municipalities may adopt an official map.
(2)
(a) An official map does not:
(i) require a landowner to dedicate and

construct a street as a condition of development approval, except under circumstances provided in Subsection (2)(b)(iii); or

(ii) require a municipality to immediately acquire property it has designated for eventual use as a public street.

(b) This section does not prohibit a municipality from:

(i) recommending that an applicant consider and accommodate the location of the proposed streets in the planning of a development proposal in a manner that is consistent with Section 10-9a-508;

(ii) acquiring the property through purchase, gift, voluntary dedication, or eminent domain; or

(iii) requiring the dedication and improvement of a street if the street is found necessary by the municipality because of a proposed development and if the dedication and improvement are consistent with Section 10-9a-508.

Renumbered and Amended by Chapter 254, 2005 General Session

10-9a-408 Biennial review of moderate income housing element of general plan.

(1) The legislative body of each city shall biennially:

(a) review the moderate income housing plan element of its general plan and its implementation; and

(b) prepare a report setting forth the findings of the review.

(2) Each report under Subsection (1) shall include a description of:

(a) efforts made by the city to reduce, mitigate, or eliminate local regulatory barriers to moderate income housing;

(b) actions taken by the city to encourage preservation of existing moderate income housing and development of new moderate income housing;

(c) progress made within the city to provide moderate income housing, as measured by permits issued for new units of moderate income housing; and

(d) efforts made by the city to coordinate moderate income housing plans and actions with neighboring municipalities.

(3) The legislative body of each city shall send a copy of the report under Subsection (1) to the Department of Workforce Services and the association of governments in which the city is located.

(4) In a civil action seeking enforcement or claiming a violation of this section or of Subsection 10-9a-404(5)(c), a plaintiff may not recover damages but may be awarded only injunctive or other equitable relief.

Amended by Chapter 212, 2012 General Session

Part 5
Land Use Ordinances

10-9a-501 Authority to enact land use ordinances and zoning map.

The legislative body may enact land use ordinances and a zoning map consistent with the purposes set forth in this chapter.

Amended by Chapter 240, 2006 General Session

10-9a-502 Preparation and adoption of land use ordinance or zoning map.

(1) The planning commission shall:

(a) provide notice as required by Subsection 10-9a-205(1)(a) and, if applicable, Subsection 10-9a-205(4);

(b) hold a public hearing on a proposed land use ordinance or zoning map;

(c) if applicable, consider each written objection

filed in accordance with Subsection 10-9a-205(4) prior to the public hearing; and

(d)

(i) prepare and recommend to the legislative body a proposed land use ordinance or ordinances and zoning map that represent the planning commission's recommendation for regulating the use and development of land within all or any part of the area of the municipality; and

(ii) forward to the legislative body all objections filed in accordance with Subsection 10-9a-205(4).

(2) The municipal legislative body shall consider each proposed land use ordinance and zoning map recommended to it by the planning commission, and, after providing notice as required by Subsection 10-9a-205(1)(b) and holding a public meeting, the legislative body may adopt or reject the ordinance or map either as proposed by the planning commission or after making any revision the municipal legislative body considers appropriate.

Amended by Chapter 324, 2013 General Session

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

(1) The legislative body may amend:

(a) the number, shape, boundaries, or area of any zoning district;

(b) any regulation of or within the zoning district; or

(c) any other provision of a land use ordinance.

(2) The legislative body may not make any amendment authorized by this section unless the amendment was proposed by the planning commission or was first submitted to the planning commission for its recommendation.

(3) The legislative body shall comply with the procedure specified in Section 10-9a-502 in preparing and adopting an amendment to a land use ordinance or a zoning map.

(4)

(a) As used in this Subsection (4):

(i) "Condominium project" means the same as that term is defined in Section 57-8-3.

(ii) "Local historic district or area" means a geographically or thematically definable area that 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.

(iii) "Unit" means the same as that term is defined in Section 57-8-3.

(b) If a municipality provides a process by which one or more residents of the municipality may initiate the creation of a local historic district or area, 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.

Amended by Chapter 404, 2016 General Session

10-9a-504 Temporary land use regulations.

(1)

(a) A municipal legislative body may, without prior consideration of or recommendation from the planning commission, enact an ordinance establishing a temporary land use regulation for any part or all of the area within the municipality if:

(i) the legislative body makes a finding of compelling, countervailing public interest; or

(ii) the area is unregulated.

(b) A temporary land use regulation under Subsection (1)(a) may prohibit or regulate the erection, construction, reconstruction, or alteration of any building or structure or any subdivision approval.

(c) A temporary land use regulation under Subsection (1)(a) may not impose an impact fee or other financial requirement on building or development.

(2) The municipal legislative body shall establish a period of limited effect for the ordinance not to exceed six months.

(3)

(a) A municipal legislative body may, without

prior planning commission consideration or recommendation, enact an ordinance establishing a temporary land use regulation prohibiting construction, subdivision approval, and other development activities within an area that is the subject of an Environmental Impact Statement or a Major Investment Study examining the area as a proposed highway or transportation corridor.

(b) A regulation under Subsection (3)(a):

(i) may not exceed six months in duration;

(ii) may be renewed, if requested by the Transportation Commission created under Section 72-1-301, for up to two additional six-month periods by ordinance enacted before the expiration of the previous regulation; and

(iii) notwithstanding Subsections (3)(b)(i) and (ii), is effective only as long as the Environmental Impact Statement or Major Investment Study is in progress.

Renumbered and Amended by Chapter 254, 2005 General Session

10-9a-505 Zoning districts.

(1)

(a) The legislative body may divide the territory over which it has jurisdiction into zoning districts of a number, shape, and area that it considers appropriate to carry out the purposes of this chapter.

(b) Within those zoning districts, the legislative body may regulate and restrict the erection, construction, reconstruction, alteration, repair, or use of buildings and structures, and the use of land.

(c) A municipality may enact an ordinance regulating land use and development in a flood plain or potential geologic hazard area to:

(i) protect life; and

(ii) prevent:

(A) the substantial loss of real property; or

(B) substantial damage to real property.

(2) The legislative body shall ensure that the regulations are uniform for each class or kind of buildings throughout each zoning district, but the regulations in one zone may differ from those in other zones.

(3)

(a) There is no minimum area or diversity of ownership requirement for a zone designation.

(b) Neither the size of a zoning district nor the number of landowners within the district may be used as evidence of the illegality of a zoning district or of the invalidity of a municipal decision.

(4) A municipality may by ordinance exempt from specific zoning district standards a subdivision of land to accommodate the siting of a public utility infrastructure.

Amended by Chapter 327, 2015 General Session

10-9a-505.5 Limit on single family designation.

(1) As used in this section, “single-family limit” means the number of unrelated individuals allowed to occupy each residential unit that is recognized by a land use authority in a zone permitting occupancy by a single family.

(2) A municipality may not adopt a single-family limit that is less than:

(a) three, if the municipality has within its boundary:

(i) a state university; or

(ii) a private university with a student population of at least 20,000; or

(b) four, for each other municipality.

Amended by Chapter 172, 2012 General Session

10-9a-506 Regulating annexed territory.

(1) The legislative body of each municipality shall assign a land use zone or a variety thereof to territory annexed to the municipality at the time the territory is annexed.

(2) If the legislative body fails to assign a land use zone at the time the territory is annexed, all land

uses within the annexed territory shall be compatible with surrounding uses within the municipality.

Renumbered and Amended by Chapter 254, 2005 General Session

10-9a-507 Conditional uses.

(1) A land use ordinance may include conditional uses and provisions for conditional uses that require compliance with standards set forth in an applicable ordinance.

(2)

(a) A conditional use shall be approved if reasonable conditions are proposed, or can be imposed, to mitigate the reasonably anticipated detrimental effects of the proposed use in accordance with applicable standards.

(b) If the reasonably anticipated detrimental effects of a proposed conditional use cannot be substantially mitigated by the proposal or the imposition of reasonable conditions to achieve compliance with applicable standards, the conditional use may be denied.

Amended by Chapter 245, 2005 General Session
Renumbered and Amended by Chapter 254, 2005 General Session

10-9a-508 Exactions -- Exaction for water interest -- Requirement to offer to original owner property acquired by exaction.

(1) A municipality may impose an exaction or exactions on development proposed in a land use application, including, subject to Subsection (3), an exaction for a water interest, if:

(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.

(2) If a land use authority imposes an exaction for another governmental entity:

(a) the governmental entity shall request the exaction; and

(b) the land use authority shall transfer the exaction to the governmental entity for which it was exacted.

(3)

(a)

(i) A municipality shall base any exaction for a water interest on the culinary water authority's established calculations of projected water interest requirements.

(ii) Upon an applicant's request, the culinary water authority shall provide the applicant with the basis for the culinary water authority's calculations under Subsection (3)(a)(i) on which an exaction for a water interest is based.

(b) A municipality may not impose an exaction for a water interest if the culinary water authority's existing available water interests exceed the water interests needed to meet the reasonable future water requirement of the public, as determined under Subsection 73-1-4(2)(f).

(4)

(a) If a municipality plans to dispose of surplus real property that was acquired under this section and has been owned by the municipality for less than 15 years, the municipality shall first offer to reconvey the property, without receiving additional consideration, to the person who granted the property to the municipality.

(b) A person to whom a municipality offers to reconvey property under Subsection (4)(a) has 90 days to accept or reject the municipality's offer.

(c) If a person to whom a municipality offers to reconvey property declines the offer, the municipality may offer the property for sale.

(d) Subsection (4)(a) does not apply to the disposal of property acquired by exaction by a community reinvestment agency.

Amended by Chapter 350, 2016 General Session

10-9a-509 Applicant's entitlement to land use application approval -- Exceptions -- Application relating to land in a high priority transportation corridor -- Municipality's requirements and limitations -- Vesting upon submission of development plan and schedule.

(1)

(a)

(i) An applicant who has filed a complete land use application, including the payment of all application fees, is entitled to substantive land use review of the land use application under the land use laws in effect on the date that the application is complete and as further provided in this section.

(ii) Except as provided in Subsection (1)(b), an applicant is entitled to approval of a land use application if the application conforms to the requirements of the municipality's land use maps, zoning map, a municipal specification for public improvements applicable to a subdivision or development, and an applicable land use ordinance in effect when a complete application is submitted and all application fees have been paid, unless:

(A) the land use authority, on the record, finds that a compelling, countervailing public interest would be jeopardized by approving the application; or

(B) in the manner provided by local ordinance and before the application is submitted, the municipality has formally initiated proceedings to amend its ordinances in a manner that would prohibit approval of the application as submitted.

(b)

(i) Except as provided in Subsection (1)(c), an applicant is not entitled to approval of a land use application until the requirements of this Subsection (1)(b) have been met if the land use application relates to land located within the boundaries of a high priority transportation corridor designated in accordance with Section 72-5-403.

(ii)

(A) A municipality shall notify the executive director of the Department of Transportation of any land use applications that relate to land located within the boundaries of a high priority transportation corridor.

(B) The notification under Subsection (1)(b)(ii)(A) shall be in writing and mailed by certified or registered mail to the executive director of the Department of Transportation.

(iii) Except as provided in Subsection (1)(c), a municipality may not approve a land use application that relates to land located within the boundaries of a high priority transportation corridor until:

(A) 30 days after the notification under Subsection (1)(b)(ii)(A) is received by the Department of Transportation if the land use application is for a building permit; or

(B) 45 days after the notification under Subsection (1)(b)(ii)(A) is received by the Department of Transportation if the land use application is for any land use other than a building permit.

(iv)

(A) If an application is an application for a subdivision approval, including any land, subject to Subsection (1)(b)(iv)(C), located within 100 feet of the center line of a canal, the land use authority shall:

(I) within 30 days after the day on which the application is filed, notify the canal company or canal operator responsible for the canal, if the canal company or canal operator has provided information under Section 10-9a-211; and

(II) wait at least 10 days after the day on which the land use authority notifies a

canal company or canal operator under Subsection (1)(b)(iv)(A)(I) to approve or reject the subdivision application described in Subsection (1)(b)(iv)(A).

(B) The notification under Subsection (1)(b)(iv)(A) shall be in writing and mailed by certified or registered mail to the canal company or canal operator contact described in Section 10-9a-211.

(C) The location of land described in Subsection (1)(b)(iv)(A) shall be:

(I) provided by a canal company or canal operator to the land use authority; and

(II)

(Aa) determined by use of mapping-grade global positioning satellite units; or

(Bb) digitized from the most recent aerial photo available to the canal company or canal operator.

(c)

(i) A land use application is exempt from the requirements of Subsections (1)(b)(i) and (ii) if:

(A) the land use application relates to land that was the subject of a previous land use application; and

(B) the previous land use application described under Subsection (1)(c)(i)(A) complied with the requirements of Subsections (1)(b)(i) and (ii).

(ii) A municipality may approve a land use application without making the required notifications under Subsection (1)(b)(ii)(A) if:

(A) the land use application relates to land that was the subject of a previous land use application; and

(B) the previous land use application described under Subsection (1)(c)(ii)(A) complied with the requirements of Subsections (1)(b)(i) and (ii).

(d) After a municipality has complied with the requirements of Subsection (1)(b) for a land use application, the municipality may not withhold approval of the land use application for which the applicant is otherwise entitled under Subsection (1)(a).

(e) The municipality shall process an application without regard to proceedings initiated to amend the municipality's ordinances as provided in Subsection (1)(a)(ii)(B) if:

(i) 180 days have passed since the proceedings were initiated; and

(ii) the proceedings have not resulted in an enactment that prohibits approval of the application as submitted.

(f) An application for a land use approval is considered submitted and complete when the application is provided in a form that complies with the requirements of applicable ordinances and all applicable fees have been paid.

(g) The continuing validity of an approval of a land use application is conditioned upon the applicant proceeding after approval to implement the approval with reasonable diligence.

(h) A municipality may not impose on an applicant who has submitted a complete application for preliminary subdivision approval a requirement that is not expressed in:

(i) this chapter;

(ii) a municipal ordinance; or

(iii) a municipal specification for public improvements applicable to a subdivision or development that is in effect on the date that the applicant submits an application.

(i) A municipality may not impose on a holder of an issued land use permit or a final, unexpired subdivision plat a requirement that is not expressed:

(i) in a land use permit;

(ii) on the subdivision plat;

(iii) in a document on which the land use permit or subdivision plat is based;

(iv) in the written record evidencing approval of the land use permit or subdivision plat;

(v) in this chapter; or

(vi) in a municipal ordinance.

(j) A municipality may not withhold issuance of a certificate of occupancy or acceptance of subdivision improvements because of an applicant's failure to comply with a requirement that is not expressed:

(i) in the building permit or subdivision plat, documents on which the building permit or subdivision plat is based, or the written record evidencing approval of the land use permit or subdivision plat; or

(ii) in this chapter or the municipality's ordinances.

(2) A municipality is bound by the terms and standards of applicable land use ordinances and shall comply with mandatory provisions of those ordinances.

(3) A municipality may not, as a condition of land use application approval, require a person filing a land use application to obtain documentation regarding a school district's willingness, capacity, or ability to serve the development proposed in the land use application.

(4) Upon a specified public agency's submission of a development plan and schedule as required in Subsection 10-9a-305(8) that complies with the requirements of that subsection, the specified public agency vests in the municipality's applicable land use maps, zoning map, hookup fees, impact fees, other applicable development fees, and land use ordinances in effect on the date of submission.

Amended by Chapter 136, 2014 General Session

10-9a-509.5 Review for application completeness -- Substantive application review -- Reasonable diligence required for determination of whether improvements or warranty work meets standards -- Money damages claim prohibited.

(1)

(a) Each municipality shall, in a timely manner, determine whether an application is complete for the purposes of subsequent, substantive land use authority review.

(b) After a reasonable period of time to allow the municipality diligently to evaluate whether all objective ordinance-based application criteria have been met, if application fees have been paid, the applicant may in writing request that the municipality provide a written determination either that the application is:

(i) complete for the purposes of allowing subsequent, substantive land use authority review; or

(ii) deficient with respect to a specific, objective, ordinance-based application requirement.

(c) Within 30 days of receipt of an applicant's request under this section, the municipality shall either:

(i) mail a written notice to the applicant advising that the application is deficient with respect to a specified, objective, ordinance-based criterion, and stating that the application shall be supplemented by specific additional information identified in the notice; or

(ii) accept the application as complete for the purposes of further substantive processing by the land use authority.

(d) If the notice required by Subsection (1)(c)(i) is not timely mailed, the application shall be considered complete, for purposes of further substantive land use authority review.

(e)

(i) The applicant may raise and resolve in a single appeal any determination made under this Subsection (1) to the appeal authority, including an allegation that a reasonable period of time has elapsed under Subsection (1)(a).

(ii) The appeal authority shall issue a written decision for any appeal requested under this Subsection (1)(e).

(f)

(i) The applicant may appeal to district court the decision of the appeal authority made under Subsection (1)(e).
(ii) Each appeal under Subsection (1)(f)(i) shall be made within 30 days of the date of the written decision.

(2)
(a) Each land use authority shall substantively review a complete application and an application considered complete under Subsection (1)(d), and shall approve or deny each application with reasonable diligence.
(b) After a reasonable period of time to allow the land use authority to consider an application, the applicant may in writing request that the land use authority take final action within 45 days from date of service of the written request.
(c) The land use authority shall take final action, approving or denying the application within 45 days of the written request.
(d) If the land use authority denies an application processed under the mandates of Subsection (2)(b), or if the applicant has requested a written decision in the application, the land use authority shall include its reasons for denial in writing, on the record, which may include the official minutes of the meeting in which the decision was rendered.
(e) If the land use authority fails to comply with Subsection (2)(c), the applicant may appeal this failure to district court within 30 days of the date on which the land use authority is required to take final action under Subsection (2)(c).

(3)
(a) With reasonable diligence, each land use authority shall determine whether the installation of required subdivision improvements or the performance of warranty work meets the municipality's adopted standards.
(b)
(i) An applicant may in writing request the land use authority to accept or reject the applicant's installation of required subdivision improvements or performance of warranty work.
(ii) The land use authority shall accept or reject subdivision improvements within 15 days after receiving an applicant's written request under Subsection (3)(b)(i), or as soon as practicable after that 15-day period if inspection of the subdivision improvements is impeded by winter weather conditions.
(iii) The land use authority shall accept or reject the performance of warranty work within 45 days after receiving an applicant's written request under Subsection (3)(b)(i), or as soon as practicable after that 45-day period if inspection of the warranty work is impeded by winter weather conditions.
(c) If a land use authority determines that the installation of required subdivision improvements or the performance of warranty work does not meet the municipality's adopted standards, the land use authority shall comprehensively and with specificity list the reasons for its determination.

(4) Subject to Section 10-9a-509, nothing in this section and no action or inaction of the land use authority relieves an applicant's duty to comply with all applicable substantive ordinances and regulations.
(5) There shall be no money damages remedy arising from a claim under this section.

Amended by Chapter 378, 2010 General Session

10-9a-509.7 Transferable development rights.
(1) A municipality may adopt an ordinance:
(a) designating sending zones and receiving zones within the municipality; and
(b) allowing the transfer of a transferable development right from a sending zone to a receiving zone.
(2) A municipality may not allow the use of a transferable development right unless the municipality adopts an ordinance described in

Subsection (1).

Amended by Chapter 231, 2012 General Session

10-9a-510 Limit on fees -- Requirement to itemize fees -- Appeal of fee -- Provider of culinary or secondary water.

(1) A municipality may not impose or collect a fee for reviewing or approving the plans for a commercial or residential building that exceeds the lesser of:

(a) the actual cost of performing the plan review; and

(b) 65% of the amount the municipality charges for a building permit fee for that building.

(2) Subject to Subsection (1), a municipality may impose and collect only a nominal fee for reviewing and approving identical floor plans.

(3) A municipality may not impose or collect a hookup fee that exceeds the reasonable cost of installing and inspecting the pipe, line, meter, and appurtenance to connect to the municipal water, sewer, storm water, power, or other utility system.

(4) A municipality may not impose or collect:

(a) a land use application fee that exceeds the reasonable cost of processing the application or issuing the permit; or

(b) an inspection, regulation, or review fee that exceeds the reasonable cost of performing the inspection, regulation, or review.

(5)

(a) If requested by an applicant who is charged a fee or an owner of residential property upon which a fee is imposed, the municipality shall provide an itemized fee statement that shows the calculation method for each fee.

(b) If an applicant who is charged a fee or an owner of residential property upon which a fee is imposed submits a request for an itemized fee statement no later than 30 days after the day on which the applicant or owner pays the fee, the municipality shall no later than 10 days after the day on which the request is received provide or commit to provide within a specific time:

(i) for each fee, any studies, reports, or methods relied upon by the municipality to create the calculation method described in Subsection (5)(a);

(ii) an accounting of each fee paid;

(iii) how each fee will be distributed; and

(iv) information on filing a fee appeal through the process described in Subsection (5)(c).

(c) A municipality shall establish a fee appeal process subject to an appeal authority described in Part 7, Appeal Authority and Variances, and district court review in accordance with Part 8, District Court Review, to determine whether a fee reflects only the reasonable estimated cost of:

(i) regulation;

(ii) processing an application;

(iii) issuing a permit; or

(iv) delivering the service for which the applicant or owner paid the fee.

(6) A municipality may not impose on or collect from a public agency any fee associated with the public agency's development of its land other than:

(a) subject to Subsection (4), a fee for a development service that the public agency does not itself provide;

(b) subject to Subsection (3), a hookup fee; and

(c) an impact fee for a public facility listed in Subsection 11-36a-102(16)(a), (b), (c), (d), (e), or (g), subject to any applicable credit under Subsection 11-36a-402(2).

(7) A provider of culinary or secondary water that commits to provide a water service required by a land use application process is subject to the following as if it were a municipality:

(a) Subsections (5) and (6);

(b) Section 10-9a-508; and

(c) Section 10-9a-509.5.

Amended by Chapter 200, 2013 General Session

10-9a-511 Nonconforming uses and noncomplying structures.

(1)
(a) Except as provided in this section, a nonconforming use or noncomplying structure may be continued by the present or a future property owner.
(b) A nonconforming use may be extended through the same building, provided no structural alteration of the building is proposed or made for the purpose of the extension.
(c) For purposes of this Subsection (1), the addition of a solar energy device to a building is not a structural alteration.
(2) The legislative body may provide for:
(a) the establishment, restoration, reconstruction, extension, alteration, expansion, or substitution of nonconforming uses upon the terms and conditions set forth in the land use ordinance;
(b) the termination of all nonconforming uses, except billboards, by providing a formula establishing a reasonable time period during which the owner can recover or amortize the amount of his investment in the nonconforming use, if any; and
(c) the termination of a nonconforming use due to its abandonment.
(3)
(a) A municipality may not prohibit the reconstruction or restoration of a noncomplying structure or terminate the nonconforming use of a structure that is involuntarily destroyed in whole or in part due to fire or other calamity unless the structure or use has been abandoned.
(b) A municipality may prohibit the reconstruction or restoration of a noncomplying structure or terminate the nonconforming use of a structure if:
(i) the structure is allowed to deteriorate to a condition that the structure is rendered uninhabitable and is not repaired or restored within six months after written notice to the property owner that the structure is uninhabitable and that the noncomplying structure or nonconforming use will be lost if the structure is not repaired or restored within six months; or
(ii) the property owner has voluntarily demolished a majority of the noncomplying structure or the building that houses the nonconforming use.
(c)
(i) Notwithstanding a prohibition in its zoning ordinance, a municipality may permit a billboard owner to relocate the billboard within the municipality's boundaries to a location that is mutually acceptable to the municipality and the billboard owner.
(ii) If the municipality and billboard owner cannot agree to a mutually acceptable location within 90 days after the owner submits a written request to relocate the billboard, the provisions of Subsection 10-9a-513(2)(a)(iv) apply.
(4)
(a) Unless the municipality establishes, by ordinance, a uniform presumption of legal existence for nonconforming uses, the property owner shall have the burden of establishing the legal existence of a noncomplying structure or nonconforming use.
(b) Any party claiming that a nonconforming use has been abandoned shall have the burden of establishing the abandonment.
(c) Abandonment may be presumed to have occurred if:
(i) a majority of the primary structure associated with the nonconforming use has been voluntarily demolished without prior written agreement with the municipality regarding an extension of the nonconforming use;
(ii) the use has been discontinued for a minimum of one year; or
(iii) the primary structure associated with the nonconforming use remains vacant for a period of one year.
(d) The property owner may rebut the presumption of abandonment under Subsection

(4)(c), and shall have the burden of establishing that any claimed abandonment under Subsection (4)(b) has not in fact occurred.

(5) A municipality may terminate the nonconforming status of a school district or charter school use or structure when the property associated with the school district or charter school use or structure ceases to be used for school district or charter school purposes for a period established by ordinance.

Amended by Chapter 205, 2015 General Session

10-9a-511.5 Changes to dwellings -- Egress windows.

(1) For purposes of this section, "rental dwelling" means the same as that term is defined in Section 10-8-85.5.

(2) A municipal ordinance adopted under Section 10-1-203.5 may not:

(a) require physical changes in a structure with a legal nonconforming rental dwelling use unless the change is for:

(i) the reasonable installation of:

(A) a smoke detector that is plugged in or battery operated;

(B) a ground fault circuit interrupter protected outlet on existing wiring;

(C) street addressing;

(D) except as provided in Subsection (3), an egress bedroom window if the existing bedroom window is smaller than that required by current State Construction Code;

(E) an electrical system or a plumbing system, if the existing system is not functioning or is unsafe as determined by an independent electrical or plumbing professional who is licensed in accordance with Title 58, Occupations and Professions;

(F) hand or guard rails; or

(G) occupancy separation doors as required by the International Residential Code; or

(ii) the abatement of a structure; or

(b) be enforced to terminate a legal nonconforming rental dwelling use.

(3) A municipality may not require physical changes to install an egress or emergency escape window in an existing bedroom that complied with the State Construction Code in effect at the time the bedroom was finished if:

(a) the dwelling is an owner-occupied dwelling or a rental dwelling that is:

(i) a detached one-, two-, three-, or four-family dwelling; or

(ii) a town home that is not more than three stories above grade with a separate means of egress; and

(b)

(i) the window in the existing bedroom is smaller than that required by current State Construction Code; and

(ii) the change would compromise the structural integrity of the structure or could not be completed in accordance with current State Construction Code, including set-back and window well requirements.

(4) Nothing in this section prohibits a municipality from:

(a) regulating the style of window that is required or allowed in a bedroom;

(b) requiring that a window in an existing bedroom be fully openable if the openable area is less than required by current State Construction Code; or

(c) requiring that an existing window not be reduced in size if the openable area is smaller than required by current State Construction Code.

Enacted by Chapter 205, 2015 General Session

10-9a-512 Termination of a billboard and associated rights.

(1) A municipality may only require termination of a

billboard and associated property rights through:
(a) gift;
(b) purchase;
(c) agreement;
(d) exchange; or
(e) eminent domain.
(2) A termination under Subsection (1)(a), (b), (c), or (d) requires the voluntary consent of the billboard owner.

Renumbered and Amended by Chapter 254, 2005 General Session

10-9a-513 Municipality's acquisition of billboard by eminent domain -- Removal without providing compensation -- Limit on allowing nonconforming billboards to be rebuilt or replaced -- Validity of municipal permit after issuance of state permit.
(1) As used in this section:
(a) "Clearly visible" means capable of being read without obstruction by an occupant of a vehicle traveling on a street or highway within the visibility area.
(b) "Highest allowable height" means:
(i) if the height allowed by the municipality, by ordinance or consent, is higher than the height under Subsection (1)(b)(ii), the height allowed by the municipality; or
(ii)
(A) for a noninterstate billboard:
(I) if the height of the previous use or structure is 45 feet or higher, the height of the previous use or structure; or
(II) if the height of the previous use or structure is less than 45 feet, the height of the previous use or structure or the height to make the entire advertising content of the billboard clearly visible, whichever is higher, but no higher than 45 feet; and
(B) for an interstate billboard:
(I) if the height of the previous use or structure is at or above the interstate height, the height of the previous use or structure; or
(II) if the height of the previous use or structure is less than the interstate height, the height of the previous use or structure or the height to make the entire advertising content of the billboard clearly visible, whichever is higher, but no higher than the interstate height.
(c) "Interstate billboard" means a billboard that is intended to be viewed from a highway that is an interstate.
(d) "Interstate height" means a height that is the higher of:
(i) 65 feet above the ground; and
(ii) 25 feet above the grade of the interstate.
(e) "Noninterstate billboard" means a billboard that is intended to be viewed from a street or highway that is not an interstate.
(f) "Visibility area" means the area on a street or highway that is:
(i) defined at one end by a line extending from the base of the billboard across all lanes of traffic of the street or highway in a plane that is perpendicular to the street or highway; and
(ii) defined on the other end by a line extending across all lanes of traffic of the street or highway in a plane that is:
(A) perpendicular to the street or highway; and
(B)
(I) for an interstate billboard, 500 feet from the base of the billboard; or
(II) for a noninterstate billboard, 300 feet from the base of the billboard.
(2)
(a) A municipality is considered to have initiated the acquisition of a billboard structure by eminent domain if the municipality prevents a billboard owner from:
(i) rebuilding, maintaining, repairing, or restoring a billboard structure that is damaged

by casualty, an act of God, or vandalism;
(ii) except as provided in Subsection (2)(c), relocating or rebuilding a billboard structure, or taking other measures, to correct a mistake in the placement or erection of a billboard for which the municipality has issued a permit, if the proposed relocation, rebuilding, or other measure is consistent with the intent of that permit;
(iii) structurally modifying or upgrading a billboard;
(iv) relocating a billboard into any commercial, industrial, or manufacturing zone within the municipality's boundaries, if:
(A) the relocated billboard is:
(I) within 5,280 feet of its previous location; and
(II) no closer than:
(Aa) 300 feet from an off-premise sign existing on the same side of the street or highway; or
(Bb) if the street or highway is an interstate or limited access highway that is subject to Title 72, Chapter 7, Part 5, Utah Outdoor Advertising Act, the distance allowed under that act between the relocated billboard and an off-premise sign existing on the same side of the interstate or limited access highway; and
(B)
(I) the billboard owner has submitted a written request under Subsection 10-9a-511(3)(c); and
(II) the municipality and billboard owner are unable to agree, within the time provided in Subsection 10-9a-511(3)(c), to a mutually acceptable location; or
(v) making the following modifications, as the billboard owner determines, to a billboard that is structurally modified or upgraded under Subsection (2)(a)(iii) or relocated under Subsection (2)(a)(iv):
(A) erecting the billboard:
(I) to the highest allowable height; and
(II) as the owner determines, to an angle that makes the entire advertising content of the billboard clearly visible; and
(B) installing a sign face on the billboard that is at least the same size as, but no larger than, the sign face on the billboard before its relocation.
(b) A modification under Subsection (2)(a)(v) shall comply with Title 72, Chapter 7, Part 5, Utah Outdoor Advertising Act, to the extent applicable.
(c) A municipality's denial of a billboard owner's request to relocate or rebuild a billboard structure, or to take other measures, in order to correct a mistake in the placement or erection of a billboard does not constitute the initiation of acquisition by eminent domain under Subsection (2)(a) if the mistake in placement or erection of the billboard is determined by clear and convincing evidence to have resulted from an intentionally false or misleading statement:
(i) by the billboard applicant in the application; and
(ii) regarding the placement or erection of the billboard.
(d) If a municipality is considered to have initiated the acquisition of a billboard structure by eminent domain under Subsection (2)(a) or any other provision of applicable law, the municipality shall pay just compensation to the billboard owner in an amount that is:
(i) the value of the existing billboard at a fair market capitalization rate, based on actual annual revenue, less any annual rent expense;
(ii) the value of any other right associated with the billboard structure that is acquired;
(iii) the cost of the sign structure; and
(iv) damage to the economic unit described in Subsection 72-7-510(3)(b), of which the billboard owner's interest is a part.

(3) Notwithstanding Subsection (2) and Section 10-9a-512, a municipality may remove a billboard without providing compensation if:
(a) the municipality determines:
(i) by clear and convincing evidence that the applicant for a permit intentionally made a false or misleading statement in the applicant's application regarding the placement or erection of the billboard; or
(ii) by substantial evidence that the billboard:
(A) is structurally unsafe;
(B) is in an unreasonable state of repair; or
(C) has been abandoned for at least 12 months;
(b) the municipality notifies the owner in writing that the owner's billboard meets one or more of the conditions listed in Subsections (3)(a)(i) and (ii);
(c) the owner fails to remedy the condition or conditions within:
(i) except as provided in Subsection (3)(c)(ii), 90 days following the billboard owner's receipt of written notice under Subsection (3)(b); or
(ii) if the condition forming the basis of the municipality's intention to remove the billboard is that it is structurally unsafe, 10 business days, or a longer period if necessary because of a natural disaster, following the billboard owner's receipt of written notice under Subsection (3)(b); and
(d) following the expiration of the applicable period under Subsection (3)(c) and after providing the owner with reasonable notice of proceedings and an opportunity for a hearing, the municipality finds:
(i) by clear and convincing evidence, that the applicant for a permit intentionally made a false or misleading statement in the application regarding the placement or erection of the billboard; or
(ii) by substantial evidence that the billboard is structurally unsafe, is in an unreasonable state of repair, or has been abandoned for at least 12 months.
(4) A municipality may not allow a nonconforming billboard to be rebuilt or replaced by anyone other than its owner or the owner acting through its contractors.
(5) A permit issued, extended, or renewed by a municipality for a billboard remains valid from the time the municipality issues, extends, or renews the permit until 180 days after a required state permit is issued for the billboard if:
(a) the billboard requires a state permit; and
(b) an application for the state permit is filed within 30 days after the municipality issues, extends, or renews a permit for the billboard.

Amended by Chapter 170, 2009 General Session
Amended by Chapter 233, 2009 General Session

10-9a-514 Manufactured homes.
(1) For purposes of this section, a manufactured home is the same as defined in Section 15A-1-302, except that the manufactured home shall be attached to a permanent foundation in accordance with plans providing for vertical loads, uplift, and lateral forces and frost protection in compliance with the applicable building code. All appendages, including carports, garages, storage buildings, additions, or alterations shall be built in compliance with the applicable building code.
(2) A manufactured home may not be excluded from any land use zone or area in which a single-family residence would be permitted, provided the manufactured home complies with all local land use ordinances, building codes, and any restrictive covenants, applicable to a single family residence within that zone or area.
(3) A municipality may not:
(a) adopt or enforce an ordinance or regulation that treats a proposed development that includes manufactured homes differently than one that does not include manufactured homes; or
(b) reject a development plan based on the fact that the development is expected to contain

manufactured homes.

Amended by Chapter 14, 2011 General Session

10-9a-515 Regulation of amateur radio antennas.

(1) A municipality may not enact or enforce an ordinance that does not comply with the ruling of the Federal Communications Commission in "Amateur Radio Preemption, 101 FCC 2nd 952 (1985)" or a regulation related to amateur radio service adopted under 47 C.F.R. Part 97.

(2) If a municipality adopts an ordinance involving the placement, screening, or height of an amateur radio antenna based on health, safety, or aesthetic conditions, the ordinance shall:

(a) reasonably accommodate amateur radio communications; and

(b) represent the minimal practicable regulation to accomplish the municipality's purpose.

Renumbered and Amended by Chapter 254, 2005 General Session

10-9a-516 Regulation of residential facilities for persons with disabilities.

A municipality may only regulate a residential facility for persons with a disability to the extent allowed by:

(1)Title 57, Chapter 21, Utah Fair Housing Act, and applicable jurisprudence;

(2) the Fair Housing Amendments Act of 1988, 42 U.S.C. Sec. 3601 et seq., and applicable jurisprudence; and

(3) Section 504, Rehabilitation Act of 1973, and applicable jurisprudence.

Repealed and Re-enacted by Chapter 309, 2013 General Session

10-9a-520 Licensing of residences for persons with a disability.

The responsibility to license programs or entities that operate facilities for persons with a disability, as well as to require and monitor the provision of adequate services to persons residing in those facilities, shall rest with:

(1) for programs or entities licensed or certified by the Department of Human Services, the Department of Human Services as provided in Title 62A, Chapter 5, Services for People with Disabilities; and

(2) for programs or entities licensed or certified by the Department of Health, the Department of Health under Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act.

Amended by Chapter 309, 2013 General Session

10-9a-521 Wetlands.

A municipality may not designate or treat any land as wetlands unless the United States Army Corps of Engineers or other agency of the federal government has designated the land as wetlands.

Enacted by Chapter 388, 2007 General Session

10-9a-522 Refineries.

(1) As used in this section, "develop" or "development" means:

(a) the construction, alteration, or improvement of land, including any related moving, demolition, or excavation outside of a refinery property boundary;

(b) the subdivision of land for a non-industrial use; or

(c) the construction of a non-industrial structure on a parcel that is not subject to the subdivision process.

(2) Before a legislative body may adopt a non-industrial zoning change to permit development within 500 feet of a refinery boundary, the legislative body shall consult with the refinery to determine whether the proposed change is compatible with the refinery.

(3) Before a land use authority may approve an application to develop within 500 feet of a refinery boundary, the land use authority shall consult with the refinery to determine whether the development is compatible with the refinery.
(4) A legislative body described in Subsection (2), or a land use authority described in Subsection (3), may not request from the refinery:
(a) proprietary information;
(b) information, if made public, that would create a security or safety risk to the refinery or the public;
(c) information that is restricted from public disclosure under federal or state law; or
(d) information that is available in public record.
(5)
(a) This section does not grant authority to a legislative body described in Subsection (2), or a land use authority described in Subsection (3), to require a refinery to undertake or cease an action.
(b) This section does not create a cause of action against a refinery.
(c) Except as expressly provided in this section, this section does not alter or remove any legal right or obligation of a refinery.

Enacted by Chapter 306, 2010 General Session

10-9a-523 Parcel boundary adjustment.
(1) A property owner:
(a) may execute a parcel boundary adjustment by quitclaim deed or by a boundary line agreement as described in Section 57-1-45; and
(b) shall record the quitclaim deed or boundary line agreement in the office of the county recorder.
(2) A parcel boundary adjustment is not subject to the review of a land use authority.

Enacted by Chapter 334, 2013 General Session

10-9a-524 Boundary line agreement.
(1) As used in this section, "boundary line agreement" is an agreement described in Section 57-1-45.
(2) A property owner:
(a) may execute a boundary line agreement; and
(b) shall record a boundary line agreement in the office of the county recorder.
(3) A boundary line agreement is not subject to the review of a land use authority.

Enacted by Chapter 334, 2013 General Session

10-9a-525 High tunnels -- Exemption from municipal regulation.
(1) As used in this section, "high tunnel" means a structure that:
(a) is not a permanent structure;
(b) is used for the keeping, storing, sale, or shelter of an agricultural commodity; and
(c) has a:
(i) metal, wood, or plastic frame;
(ii) plastic, woven textile, or other flexible covering; and
(iii) floor made of soil, crushed stone, matting, pavers, or a floating concrete slab.
(2) A municipal building code does not apply to a high tunnel.
(3) No building permit shall be required for the construction of a high tunnel.

Enacted by Chapter 129, 2015 General Session

10-9a-526 Homeless shelters.
(1) As used in this section, "homeless shelter" means a facility that:
(a) is located within a municipality;
(b) provides temporary shelter to homeless families with children;
(c) has capacity to provide temporary shelter to at least 200 individuals per night; and
(d) began operation on or before January 1, 2016.
(2) A municipality may not adopt or enforce an

ordinance or other regulation that prohibits a homeless shelter from operating year-round.

Enacted by Chapter 131, 2016 General Session

Part 6
Subdivisions

10-9a-601 Enactment of subdivision ordinance.
(1) The legislative body of a municipality may enact ordinances requiring that a subdivision plat comply with the provisions of the ordinance and this part before:
(a) it may be filed or recorded in the county recorder's office; and
(b) lots may be sold.
(2) If the legislative body fails to enact a subdivision ordinance, the municipality may regulate subdivisions only to the extent provided in this part.

Renumbered and Amended by Chapter 254, 2005 General Session

10-9a-602 Planning commission preparation and recommendation of subdivision ordinance -- Adoption or rejection by legislative body.
(1) The planning commission shall:
(a) prepare and recommend a proposed ordinance to the legislative body that regulates the subdivision of land;
(b) prepare and recommend or consider and recommend a proposed ordinance that amends the regulation of the subdivision of the land in the municipality;
(c) provide notice consistent with Section 10-9a-205; and
(d) hold a public hearing on the proposed ordinance before making its final recommendation to the legislative body.
(2) The municipal legislative body may adopt or reject the ordinance either as proposed by the planning commission or after making any revision the legislative body considers appropriate.

Renumbered and Amended by Chapter 254, 2005 General Session

10-9a-603 Plat required when land is subdivided -- Approval of plat -- Owner acknowledgment, surveyor certification, and underground utility facility owner verification of plat -- Recording plat.
(1) Unless exempt under Section 10-9a-605 or excluded from the definition of subdivision under Section 10-9a-103, whenever any land is laid out and platted, the owner of the land shall provide an accurate plat that describes or specifies:
(a) a subdivision name that is distinct from any subdivision name on a plat recorded in the county recorder's office;
(b) the boundaries, course, and dimensions of all of the parcels of ground divided, by their boundaries, course, and extent, whether the owner proposes that any parcel of ground is intended to be used as a street or for any other public use, and whether any such area is reserved or proposed for dedication for a public purpose;
(c) the lot or unit reference, block or building reference, street or site address, street name or coordinate address, acreage or square footage for all parcels, units, or lots, and length and width of the blocks and lots intended for sale; and
(d) every existing right-of-way and easement grant of record for an underground facility, as defined in Section 54-8a-2, and for any other utility facility.
(2)
(a) Subject to Subsections (3), (4), and (5), if the plat conforms to the municipality's ordinances and this part and has been approved by the culinary water authority, the sanitary sewer authority, and the local health department, as defined in Section 26A-1-102, if the local health department and the municipality consider the

local health department's approval necessary, the municipality shall approve the plat.

(b) Municipalities are encouraged to receive a recommendation from the fire authority before approving a plat.

(c) A municipality may not require that a plat be approved or signed by a person or entity who:

(i) is not an employee or agent of the municipality;

(ii) does not:

(A) have a legal or equitable interest in the property within the proposed subdivision;

(B) provide a utility or other service directly to a lot within the subdivision;

(C) own an easement or right-of-way adjacent to the proposed subdivision who signs for the purpose of confirming the accuracy of the location of the easement or right-of-way in relation to the plat; or

(D) provide culinary public water service whose source protection zone designated as provided in Section 19-4-113 is included, in whole or in part, within the proposed subdivision; or

(iii) is not entitled to notice of the subdivision pursuant to Subsection 10-9a-509(1)(b)(iv) for the purpose of determining the accuracy of the information depicted on the plat.

(3) The municipality may withhold an otherwise valid plat approval until the owner of the land provides the legislative body with a tax clearance indicating that all taxes, interest, and penalties owing on the land have been paid.

(4)

(a) A plat may not be submitted to a county recorder for recording unless:

(i) prior to recordation, each owner of record of land described on the plat has signed the owner's dedication as shown on the plat; and

(ii) the signature of each owner described in Subsection (4)(a)(i) is acknowledged as provided by law.

(b) The surveyor making the plat shall certify that the surveyor:

(i) holds a license in accordance with Title 58, Chapter 22, Professional Engineers and Professional Land Surveyors Licensing Act;

(ii) has completed a survey of the property described on the plat in accordance with Section 17-23-17 and has verified all measurements; and

(iii) has placed monuments as represented on the plat.

(c)

(i) To the extent possible, the surveyor shall consult with the owner or operator of an existing or proposed underground facility or utility facility within the proposed subdivision, or a representative designated by the owner or operator, to verify the accuracy of the surveyor's depiction of the:

(A) boundary, course, dimensions, and intended use of the public rights-of-way, a public or private easement, or grants of record;

(B) location of an existing underground facility and utility facility; and

(C) physical restrictions governing the location of the underground facility and utility facility within the subdivision.

(ii) The cooperation of an owner or operator under Subsection (4)(c)(i):

(A) indicates only that the plat approximates the location of the existing underground and utility facilities but does not warrant or verify their precise location; and

(B) does not affect a right that the owner or operator has under:

(I)Title 54, Chapter 8a, Damage to Underground Utility Facilities;

(II) a recorded easement or right-of-way;

(III) the law applicable to prescriptive rights; or

(IV) any other provision of law.

(5)

(a) After the plat has been acknowledged, certified, and approved, the owner of the land shall, within the time period designated by ordinance, record the plat in the county recorder's office in the county in which the lands platted and laid out are situated.
(b) An owner's failure to record a plat within the time period designated by ordinance renders the plat voidable.

Amended by Chapter 327, 2015 General Session

10-9a-604 Subdivision plat approval procedure -- Effect of not complying.
(1) A person may not submit a subdivision plat to the county recorder's office for recording unless:
(a) the person has complied with the requirements of Subsection 10-9a-603(4)(a);
(b) the plat has been approved by:
(i) the land use authority of the municipality in which the land described in the plat is located; and
(ii) other officers that the municipality designates in its ordinance; and
(c) all approvals described in Subsection (1)(b) are entered in writing on the plat by the designated officers.
(2) A subdivision plat recorded without the signatures required under this section is void.
(3) A transfer of land pursuant to a void plat is voidable.

Amended by Chapter 381, 2010 General Session

10-9a-604.5 Subdivision plat recording or development activity before required infrastructure is completed -- Infrastructure completion assurance -- Infrastructure warranty.
(1) A land use authority shall establish objective inspection standards for acceptance of a required landscaping or infrastructure improvement.
(2)
(a) A land use authority shall require an applicant to complete a required landscaping or infrastructure improvement prior to any plat recordation or development activity.
(b) Subsection (2)(a) does not apply if:
(i) upon the applicant's request, the land use authority has authorized the applicant to post an improvement completion assurance in a manner that is consistent with local ordinance; and
(ii) the land use authority has established a system for the partial release of the improvement completion assurance as portions of required improvements are completed and accepted.
(3) At any time up to the land use authority's acceptance of a landscaping or infrastructure improvement, and for the duration of each improvement warranty period, the land use authority may require the developer to:
(a) execute an improvement warranty for the improvement warranty period; and
(b) post a cash deposit, surety bond, letter of credit, or other similar security, as required by the municipality, in the amount of up to 10% of the lesser of the:
(i) municipal engineer's original estimated cost of completion; or
(ii) applicant's reasonable proven cost of completion.
(4) The provisions of this section may not be interpreted to supersede the terms of a valid development agreement, an adopted phasing plan, or the state construction code.

Amended by Chapter 327, 2015 General Session

10-9a-605 Exemptions from plat requirement.
(1) Notwithstanding Sections 10-9a-603 and 10-9a-604, the land use authority may approve a subdivision of 10 lots or less without a plat, by certifying in writing that:
(a) the municipality has provided notice as required by ordinance; and

(b) the proposed subdivision:
(i) is not traversed by the mapped lines of a proposed street as shown in the general plan and does not require the dedication of any land for street or other public purposes;
(ii) has been approved by the culinary water authority and the sanitary sewer authority;
(iii) is located in a zoned area; and
(iv) conforms to all applicable land use ordinances or has properly received a variance from the requirements of an otherwise conflicting and applicable land use ordinance.

(2)
(a) Subject to Subsection (1), a lot or parcel resulting from a division of agricultural land is exempt from the plat requirements of Section 10-9a-603 if the lot or parcel:
(i) qualifies as land in agricultural use under Section 59-2-502;
(ii) meets the minimum size requirement of applicable land use ordinances; and
(iii) is not used and will not be used for any nonagricultural purpose.
(b) The boundaries of each lot or parcel exempted under Subsection (2)(a) shall be graphically illustrated on a record of survey map that, after receiving the same approvals as are required for a plat under Section 10-9a-604, shall be recorded with the county recorder.
(c) If a lot or parcel exempted under Subsection (2)(a) is used for a nonagricultural purpose, the municipality may require the lot or parcel to comply with the requirements of Section 10-9a-603.

(3)
(a) Documents recorded in the county recorder's office that divide property by a metes and bounds description do not create an approved subdivision allowed by this part unless the land use authority's certificate of written approval required by Subsection (1) is attached to the document.
(b) The absence of the certificate or written approval required by Subsection (1) does not:
(i) prohibit the county recorder from recording a document; or
(ii) affect the validity of a recorded document.
(c) A document which does not meet the requirements of Subsection (1) may be corrected by the recording of an affidavit to which the required certificate or written approval is attached in accordance with Section 57-3-106.

Amended by Chapter 381, 2010 General Session

10-9a-606 Common or community area parcels on a plat -- No separate ownership -- Ownership interest equally divided among other parcels on plat and included in description of other parcels.

(1)
(a) A parcel designated as a common or community area on a plat recorded in compliance with this part may not be separately owned or conveyed independent of the other lots, units, or parcels created by the plat unless:
(i) the parcel is being acquired by a municipality for a governmental purpose; and
(ii) the conveyance is approved by the owners of at least 75% of the lots, units, or parcels on the plat, after the municipality gives its approval.
(b) A notice of the owner approval described in Subsection (1)(a)(ii) shall be:
(i) attached as an exhibit to the document of conveyance; or
(ii) recorded concurrently with the conveyance as a separate document.

(2) The ownership interest in a parcel described in Subsection (1) shall:
(a) for purposes of assessment, be divided equally among all parcels created by the plat, unless a different division of interest for assessment purposes is indicated on the plat or an accompanying recorded document; and

(b) be considered to be included in the description of each instrument describing a parcel on the plat by its identifying plat number, even if the common or community area interest is not explicitly stated in the instrument.

(3) A parcel designated as common or community area on a plat before, on, or after May 12, 2015, may be modified in size and location if the modification:

(a) is approved as part of a subdivision plat amendment by the local government;

(b) is approved by at least 75% of the voting interests in a homeowners association having an interest in the common or community area, if any;

(c) is approved by at least 75% of the owners of lots, units, or parcels on the plat if there is no homeowners association having an interest in the common or community area, if any; and

(d) does not create a new buildable lot.

(4) A parcel designated as common or community area on a plat before, on, or after May 12, 2015, may be modified in size without a subdivision plat amendment approval by the local government, if the modification:

(a) is a lot line adjustment approved by at least 75% of the voting interests in a homeowners association having an interest in the common or community area, if any;

(b) is approved by at least 75% of the owners of lots, units, or parcels on the plat if there is no homeowners association having an interest in the common or community area, if any; and

(c) does not create a new buildable lot.

Amended by Chapter 327, 2015 General Session

10-9a-607 Dedication of streets and other public places.

(1) A plat that is signed, dedicated, and acknowledged by each owner of record, and approved according to the procedures specified in this part, operates, when recorded, as a dedication of all streets and other public places, and vests the fee of those parcels of land in the municipality for the public for the uses named or intended in the plat.

(2) The dedication established by this section does not impose liability upon the municipality for streets and other public places that are dedicated in this manner but are unimproved.

Amended by Chapter 381, 2010 General Session

10-9a-608 Vacating, altering, or amending a subdivision plat.

(1)

(a) A fee owner of land, as shown on the last county assessment roll, in a subdivision that has been laid out and platted as provided in this part may file a written petition with the land use authority to have some or all of the plat vacated or amended.

(b) If a petition is filed under Subsection (1)(a), the land use authority shall provide notice of the petition by mail, email, or other effective means to each affected entity that provides a service to an owner of record of the portion of the plat that is being vacated or amended at least 10 calendar days before the land use authority may approve the vacation or amendment of the plat.

(c) If a petition is filed under Subsection (1)(a), the land use authority shall hold a public hearing within 45 days after the day on which the petition is filed if:

(i) any owner within the plat notifies the municipality of the owner's objection in writing within 10 days of mailed notification; or

(ii) a public hearing is required because all of the owners in the subdivision have not signed the revised plat.

(2) Unless a local ordinance provides otherwise, the public hearing requirement of Subsection (1)(c) does not apply and a land use authority may consider at a public meeting an owner's petition to vacate or amend a subdivision plat if:

(a) the petition seeks to:
(i) join two or more of the petitioner fee owner's contiguous lots;
(ii) subdivide one or more of the petitioning fee owner's lots, if the subdivision will not result in a violation of a land use ordinance or a development condition;
(iii) adjust the lot lines of adjoining lots or parcels if the fee owners of each of the adjoining lots or parcels join in the petition, regardless of whether the lots or parcels are located in the same subdivision;
(iv) on a lot owned by the petitioning fee owner, adjust an internal lot restriction imposed by the local political subdivision; or
(v) alter the plat in a manner that does not change existing boundaries or other attributes of lots within the subdivision that are not:
(A) owned by the petitioner; or
(B) designated as a common area; and
(b) notice has been given to adjacent property owners in accordance with any applicable local ordinance.

(3) Each request to vacate or amend a plat that contains a request to vacate or amend a public street, right-of-way, or easement is also subject to Section 10-9a-609.5.

(4) Each petition to vacate or amend an entire plat or a portion of a plat shall include:
(a) the name and address of each owner of record of the land contained in the entire plat or on that portion of the plat described in the petition; and
(b) the signature of each owner described in Subsection (4)(a) who consents to the petition.

(5)
(a) The owners of record of adjacent parcels that are described by either a metes and bounds description or by a recorded plat may exchange title to portions of those parcels if the exchange of title is approved by the land use authority in accordance with Subsection (5)(b).
(b) The land use authority shall approve an exchange of title under Subsection (5)(a) if the exchange of title will not result in a violation of any land use ordinance.
(c) If an exchange of title is approved under Subsection (5)(b):
(i) a notice of approval shall be recorded in the office of the county recorder which:
(A) is executed by each owner included in the exchange and by the land use authority;
(B) contains an acknowledgment for each party executing the notice in accordance with the provisions of Title 57, Chapter 2a, Recognition of Acknowledgments Act; and
(C) recites the descriptions of both the original parcels and the parcels created by the exchange of title; and
(ii) a document of conveyance shall be recorded in the office of the county recorder.
(d) A notice of approval recorded under this Subsection (5) does not act as a conveyance of title to real property and is not required in order to record a document conveying title to real property.

(6)
(a) The name of a recorded subdivision may be changed by recording an amended plat making that change, as provided in this section and subject to Subsection (6)(c).
(b) The surveyor preparing the amended plat shall certify that the surveyor:
(i) holds a license in accordance with Title 58, Chapter 22, Professional Engineers and Professional Land Surveyors Licensing Act;
(ii) has completed a survey of the property described on the plat in accordance with Section 17-23-17 and has verified all measurements; and
(iii) has placed monuments as represented on the plat.
(c) An owner of land may not submit for recording an amended plat that gives the subdivision described in the amended plat the same name as a subdivision in a plat already

recorded in the county recorder's office.

(d) Except as provided in Subsection (6)(a), the recording of a declaration or other document that purports to change the name of a recorded plat is void.

Amended by Chapter 136, 2014 General Session

10-9a-609 Land use authority approval of vacation or amendment of plat -- Recording the amended plat.

(1) The land use authority may approve the vacation or amendment of a plat by signing an amended plat showing the vacation or amendment if the land use authority finds that:

(a) there is good cause for the vacation or amendment; and

(b) no public street, right-of-way, or easement has been vacated or amended.

(2)

(a) The land use authority shall ensure that the amended plat showing the vacation or amendment is recorded in the office of the county recorder in which the land is located.

(b) If the amended plat is approved and recorded in accordance with this section, the recorded plat shall vacate, supersede, and replace any contrary provision in a previously recorded plat of the same land.

(3)

(a) A legislative body may vacate a subdivision or a portion of a subdivision by recording in the county recorder's office an ordinance describing the subdivision or the portion being vacated.

(b) The recorded vacating ordinance shall replace a previously recorded plat described in the vacating ordinance.

(4) An amended plat may not be submitted to the county recorder for recording unless it is:

(a) signed by the land use authority; and

(b) signed, acknowledged, and dedicated by each owner of record of the portion of the plat that is amended.

(5) A management committee may sign and dedicate an amended plat as provided in Title 57, Chapter 8, Condominium Ownership Act.

(6) A plat may be corrected as provided in Section 57-3-106.

Amended by Chapter 136, 2014 General Session

10-9a-609.5 Vacating a street, right-of-way, or easement.

(1) A petition to vacate some or all of a public street, right-of-way, or easement shall include:

(a) the name and address of each owner of record of land that is:

(i) adjacent to the public street, right-of-way, or easement; or

(ii) accessed exclusively by or within 300 feet of the public street, right-of-way, or easement; and

(b) the signature of each owner under Subsection (1)(a) who consents to the vacation.

(2) If a petition is submitted containing a request to vacate some or all of a street, right-of-way, or easement, the legislative body shall hold a public hearing in accordance with Section 10-9a-208 and determine whether:

(a) good cause exists for the vacation; and

(b) the public interest or any person will be materially injured by the proposed vacation.

(3) The legislative body may adopt an ordinance granting a petition to vacate some or all of a public street, right-of-way, or easement if the legislative body finds that:

(a) good cause exists for the vacation; and

(b) neither the public interest nor any person will be materially injured by the vacation.

(4) If the legislative body adopts an ordinance vacating some or all of a public street, right-of-way, or easement, the legislative body shall ensure that one or both of the following is recorded in the office of the recorder of the county in which the land is located:

(a) a plat reflecting the vacation; or

(b) an ordinance described in Subsection (3).
(5) The action of the legislative body vacating some or all of a street, right-of-way, or easement that has been dedicated to public use:
(a) operates to the extent to which it is vacated, upon the effective date of the recorded plat, as a revocation of the acceptance of and the relinquishment of the municipality's fee in the vacated street, right-of-way, or easement; and
(b) may not be construed to impair:
(i) any right-of-way or easement of any lot owner; or
(ii) the franchise rights of any public utility.

Amended by Chapter 381, 2010 General Session

10-9a-610 Restrictions for solar and other energy devices.

The land use authority may refuse to approve or renew any plat, subdivision plan, or dedication of any street or other ground, if deed restrictions, covenants, or similar binding agreements running with the land for the lots or parcels covered by the plat or subdivision prohibit or have the effect of prohibiting reasonably sited and designed solar collectors, clotheslines, or other energy devices based on renewable resources from being installed on buildings erected on lots or parcels covered by the plat or subdivision.

Renumbered and Amended by Chapter 254, 2005 General Session

10-9a-611 Prohibited acts.
(1)
(a)
(i) An owner of any land located in a subdivision who transfers or sells any land in that subdivision before a plat of the subdivision has been approved and recorded violates this part for each lot or parcel transferred or sold.
(ii) A violation of Subsection (1)(a)(i) is an infraction.
(b) The description by metes and bounds in an instrument of transfer or other documents used in the process of selling or transferring does not exempt the transaction from being a violation of Subsection (1)(a) or from the penalties or remedies provided in this chapter.
(c) Notwithstanding any other provision of this Subsection (1), the recording of an instrument of transfer or other document used in the process of selling or transferring real property that violates this part:
(i) does not affect the validity of the instrument or other document; and
(ii) does not affect whether the property that is the subject of the instrument or other document complies with applicable municipal ordinances on land use and development.
(2)
(a) A municipality may bring an action against an owner to require the property to conform to the provisions of this part or an ordinance enacted under the authority of this part.
(b) An action under this Subsection (2) may include an injunction, abatement, merger of title, or any other appropriate action or proceeding to prevent, enjoin, or abate the violation.
(c) A municipality need only establish the violation to obtain the injunction.

Amended by Chapter 303, 2016 General Session

Part 7
Appeal Authority and Variances

10-9a-701 Appeal authority required -- Condition precedent to judicial review -- Appeal authority duties.
(1) Each municipality adopting a land use ordinance shall, by ordinance, establish one or more appeal authorities to hear and decide:

(a) requests for variances from the terms of the land use ordinances;
(b) appeals from decisions applying the land use ordinances; and
(c) appeals from a fee charged in accordance with Section 10-9a-510.

(2) As a condition precedent to judicial review, each adversely affected person shall timely and specifically challenge a land use authority's decision, in accordance with local ordinance.

(3) An appeal authority:
(a) shall:
(i) act in a quasi-judicial manner; and
(ii) serve as the final arbiter of issues involving the interpretation or application of land use ordinances; and
(b) may not entertain an appeal of a matter in which the appeal authority, or any participating member, had first acted as the land use authority.

(4) By ordinance, a municipality may:
(a) designate a separate appeal authority to hear requests for variances than the appeal authority it designates to hear appeals;
(b) designate one or more separate appeal authorities to hear distinct types of appeals of land use authority decisions;
(c) require an adversely affected party to present to an appeal authority every theory of relief that it can raise in district court;
(d) not require an adversely affected party to pursue duplicate or successive appeals before the same or separate appeal authorities as a condition of the adversely affected party's duty to exhaust administrative remedies; and
(e) provide that specified types of land use decisions may be appealed directly to the district court.

(5) If the municipality establishes or, prior to the effective date of this chapter, has established a multiperson board, body, or panel to act as an appeal authority, at a minimum the board, body, or panel shall:
(a) notify each of its members of any meeting or hearing of the board, body, or panel;
(b) provide each of its members with the same information and access to municipal resources as any other member;
(c) convene only if a quorum of its members is present; and
(d) act only upon the vote of a majority of its convened members.

Amended by Chapter 92, 2011 General Session

10-9a-702 Variances.

(1) Any person or entity desiring a waiver or modification of the requirements of a land use ordinance as applied to a parcel of property that he owns, leases, or in which he holds some other beneficial interest may apply to the applicable appeal authority for a variance from the terms of the ordinance.

(2)
(a) 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;
(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.
(b)
(i) In determining whether or not enforcement of the land use ordinance would cause unreasonable hardship under Subsection

(2)(a), the appeal authority may not find an unreasonable hardship unless the alleged hardship:

(A) is located on or associated with the property for which the variance is sought; and

(B) comes from circumstances peculiar to the property, not from conditions that are general to the neighborhood.

(ii) In determining whether or not enforcement of the land use ordinance would cause unreasonable hardship under Subsection (2)(a), the appeal authority may not find an unreasonable hardship if the hardship is self-imposed or economic.

(c) In determining whether or not there are special circumstances attached to the property under Subsection (2)(a), the appeal authority may find that special circumstances exist only if the special circumstances:

(i) relate to the hardship complained of; and

(ii) deprive the property of privileges granted to other properties in the same zone.

(3) The applicant shall bear the burden of proving that all of the conditions justifying a variance have been met.

(4) Variances run with the land.

(5) The appeal authority may not grant a use variance.

(6) In granting a variance, the appeal authority may impose additional requirements on the applicant that will:

(a) mitigate any harmful affects of the variance; or

(b) serve the purpose of the standard or requirement that is waived or modified.

Renumbered and Amended by Chapter 254, 2005 General Session

10-9a-703 Appealing a land use authority's decision -- Panel of experts for appeals of geologic hazard decisions.

(1) The applicant, a board or officer of the municipality, or any person adversely affected by the land use authority's decision administering or interpreting a land use ordinance may, within the time period provided by ordinance, appeal that decision to the appeal authority by alleging that there is error in any order, requirement, decision, or determination made by the land use authority in the administration or interpretation of the land use ordinance.

(2)

(a) An applicant who has appealed a decision of the land use authority administering or interpreting the municipality's geologic hazard ordinance may request the municipality to assemble a panel of qualified experts to serve as the appeal authority for purposes of determining the technical aspects of the appeal.

(b) If an applicant makes a request under Subsection (2)(a), the municipality shall assemble the panel described in Subsection (2)(a) consisting of, unless otherwise agreed by the applicant and municipality:

(i) one expert designated by the municipality;

(ii) one expert designated by the applicant; and

(iii) one expert chosen jointly by the municipality's designated expert and the applicant's designated expert.

(c) A member of the panel assembled by the municipality under Subsection (2)(b) may not be associated with the application that is the subject of the appeal.

(d) The applicant shall pay:

(i) 1/2 of the cost of the panel; and

(ii) the municipality's published appeal fee.

Amended by Chapter 326, 2008 General Session

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, an adversely affected party shall have 10 calendar days to appeal to an appeal authority a written decision issued by a land use authority.

Amended by Chapter 240, 2006 General Session

10-9a-705 Burden of proof.

The appellant has the burden of proving that the land use authority erred.

Enacted by Chapter 254, 2005 General Session

10-9a-706 Due process.

(1) Each appeal authority shall conduct each appeal and variance request as provided in local ordinance.
(2) Each appeal authority shall respect the due process rights of each of the participants.

Enacted by Chapter 254, 2005 General Session

10-9a-707 Standard of review for appeals.

(1) A municipality may, by ordinance, designate the standard of review for appeals of land use authority decisions.
(2) If the municipality fails to designate a standard of review of factual matters, the appeal authority shall review the matter de novo.
(3) The appeal authority shall determine the correctness of a decision of the land use authority in its interpretation and application of a land use ordinance.
(4) Only those decisions in which a land use authority has applied a land use ordinance to a particular application, person, or parcel may be appealed to an appeal authority.

Enacted by Chapter 254, 2005 General Session

10-9a-708 Final decision.

(1) A decision of an appeal authority takes effect on the date when the appeal authority issues a written decision, or as otherwise provided by ordinance.
(2) A written decision, or other event as provided by ordinance, constitutes a final decision under Subsection 10-9a-801(2)(a) or a final action under Subsection 10-9a-801(4).

Amended by Chapter 240, 2006 General Session

Part 8
District Court Review

10-9a-801 No district court review until administrative remedies exhausted -- Time for filing -- Tolling of time -- Standards governing court review -- Record on review -- Staying of decision.

(1) No person may challenge in district court a municipality's land use decision made under this chapter, or under a regulation made under authority of this chapter, until that person has exhausted the person's administrative remedies as provided in Part 7, Appeal Authority and Variances, if applicable.
(2)
(a) Any person adversely affected by a final decision made in the exercise of or in violation of the provisions of this chapter may file a petition for review of the decision with the district court within 30 days after the local land use decision is final.
(b)
(i) The time under Subsection (2)(a) to file a petition is tolled from the date a property owner files a request for arbitration of a constitutional taking issue with the property rights ombudsman under Section 13-43-204 until 30 days after:
(A) the arbitrator issues a final award; or
(B) the property rights ombudsman issues a

written statement under Subsection 13-43-204(3)(b) declining to arbitrate or to appoint an arbitrator.

(ii) A tolling under Subsection (2)(b)(i) operates only as to the specific constitutional taking issue that is the subject of the request for arbitration filed with the property rights ombudsman by a property owner.

(iii) A request for arbitration filed with the property rights ombudsman after the time under Subsection (2)(a) to file a petition has expired does not affect the time to file a petition.

(3)

(a) The courts shall:

(i) presume that a decision, ordinance, or regulation made under the authority of this chapter is valid; and

(ii) determine only whether or not the decision, ordinance, or regulation is arbitrary, capricious, or illegal.

(b) A decision, ordinance, or regulation involving the exercise of legislative discretion is valid if it is reasonably debatable that the decision, ordinance, or regulation promotes the purposes of this chapter and is not otherwise illegal.

(c) A final decision of a land use authority or an appeal authority is valid if the decision is supported by substantial evidence in the record and is not arbitrary, capricious, or illegal.

(d) A determination of illegality requires a determination that the decision, ordinance, or regulation violates a law, statute, or ordinance in effect at the time the decision was made or the ordinance or regulation adopted.

(4) The provisions of Subsection (2)(a) apply from the date on which the municipality takes final action on a land use application for any adversely affected third party, if the municipality conformed with the notice provisions of Part 2, Notice, or for any person who had actual notice of the pending decision.

(5) If the municipality has complied with Section 10-9a-205, a challenge to the enactment of a land use ordinance or general plan may not be filed with the district court more than 30 days after the enactment.

(6) The petition is barred unless it is filed within 30 days after the appeal authority's decision is final.

(7)

(a) The land use authority or appeal authority, as the case may be, shall transmit to the reviewing court the record of its proceedings, including its minutes, findings, orders, and, if available, a true and correct transcript of its proceedings.

(b) If the proceeding was tape recorded, a transcript of that tape recording is a true and correct transcript for purposes of this Subsection (7).

(8)

(a)

(i) If there is a record, the district court's review is limited to the record provided by the land use authority or appeal authority, as the case may be.

(ii) The court may not accept or consider any evidence outside the record of the land use authority or appeal authority, as the case may be, unless that evidence was offered to the land use authority or appeal authority, respectively, and the court determines that it was improperly excluded.

(b) If there is no record, the court may call witnesses and take evidence.

(9)

(a) The filing of a petition does not stay the decision of the land use authority or authority appeal authority, as the case may be.

(b)

(i) Before filing a petition under this section or a request for mediation or arbitration of a constitutional taking issue under Section 13-43-204, the aggrieved party may petition the appeal authority to stay its decision.

(ii) Upon receipt of a petition to stay, the appeal authority may order its decision stayed pending district court review if the appeal

authority finds it to be in the best interest of the municipality.

(iii) After a petition is filed under this section or a request for mediation or arbitration of a constitutional taking issue is filed under Section 13-43-204, the petitioner may seek an injunction staying the appeal authority's decision.

Amended by Chapter 306, 2007 General Session
Amended by Chapter 363, 2007 General Session

10-9a-802 Enforcement.

(1)

(a) A municipality or any adversely affected owner of real estate within the municipality in which violations of this chapter or ordinances enacted under the authority of this chapter occur or are about to occur may, in addition to other remedies provided by law, institute:

(i) injunctions, mandamus, abatement, or any other appropriate actions; or

(ii) proceedings to prevent, enjoin, abate, or remove the unlawful building, use, or act.

(b) A municipality need only establish the violation to obtain the injunction.

(2)

(a) A municipality may enforce the municipality's ordinance by withholding a building permit.

(b) It is an infraction to erect, construct, reconstruct, alter, or change the use of any building or other structure within a municipality without approval of a building permit.

(c) A municipality may not issue a building permit unless the plans of and for the proposed erection, construction, reconstruction, alteration, or use fully conform to all regulations then in effect.

(d) A municipality may not deny an applicant a building permit because the applicant has not completed an infrastructure improvement:

(i) that is not essential to meet the requirements for the issuance of a building permit under the building code and fire code; and

(ii) for which the municipality has accepted an infrastructure improvement assurance for infrastructure improvements for the development.

Amended by Chapter 303, 2016 General Session

10-9a-803 Penalties -- Notice.

(1) The municipality may, by ordinance, establish civil penalties for violations of any of the provisions of this chapter or of any ordinances adopted under the authority of this chapter.

(2) Violation of any of the provisions of this chapter or of any ordinances adopted under the authority of this chapter is punishable as a class C misdemeanor upon conviction either:

(a) as a class C misdemeanor; or

(b) by imposing the appropriate civil penalty adopted under the authority of this section.

(3) Prior to imposing upon an owner of record a civil penalty established by ordinance under authority of this chapter, a municipality shall provide:

(a) written notice, by mail or hand delivery, of each ordinance violation to the address of the:

(i) owner of record on file in the office of the county recorder; or

(ii) person designated, in writing, by the owner of record as the owner's agent for the purpose of receiving notice of an ordinance violation;

(b) the owner of record a reasonable opportunity to cure a noticed violation; and

(c) a schedule of the civil penalties that may be imposed upon the expiration of a time certain.

Amended by Chapter 218, 2012 General Session

STATUTES 2 – GOVERNMENT RECORDS ACCESS AND MANAGEMENT ACT 2016

Chapter 2
Government Records Access and Management Act

Part 1
General Provisions

63G-2-101 Title.

This chapter is known as the "Government Records Access and Management Act."

Renumbered and Amended by Chapter 382, 2008 General Session

63G-2-102 Legislative intent.

(1) In enacting this act, the Legislature recognizes two constitutional rights:
(a) the public's right of access to information concerning the conduct of the public's business; and
(b) the right of privacy in relation to personal data gathered by governmental entities.
(2) The Legislature also recognizes a public policy interest in allowing a government to restrict access to certain records, as specified in this chapter, for the public good.
(3) It is the intent of the Legislature to:
(a) promote the public's right of easy and reasonable access to unrestricted public records;
(b) specify those conditions under which the public interest in allowing restrictions on access to records may outweigh the public's interest in access;
(c) prevent abuse of confidentiality by governmental entities by permitting confidential treatment of records only as provided in this chapter;
(d) provide guidelines for both disclosure and restrictions on access to government records, which are based on the equitable weighing of the pertinent interests and which are consistent with nationwide standards of information practices;
(e) favor public access when, in the application of this act, countervailing interests are of equal weight; and
(f) establish fair and reasonable records management practices.

Renumbered and Amended by Chapter 382, 2008 General Session

63G-2-103 Definitions.

As used in this chapter:
(1) "Audit" means:
(a) a systematic examination of financial, management, program, and related records for the purpose of determining the fair presentation of financial statements, adequacy of internal controls, or compliance with laws and regulations; or
(b) a systematic examination of program procedures and operations for the purpose of determining their effectiveness, economy, efficiency, and compliance with statutes and regulations.
(2) "Chronological logs" mean the regular and customary summary records of law enforcement agencies and other public safety agencies that show:
(a) the time and general nature of police, fire, and paramedic calls made to the agency; and
(b) any arrests or jail bookings made by the agency.
(3) "Classification," "classify," and their derivative forms mean determining whether a record series, record, or information within a record is public, private, controlled, protected, or exempt from disclosure under Subsection 63G-2-201(3)(b).
(4)
(a) "Computer program" means:
(i) a series of instructions or statements that

permit the functioning of a computer system in a manner designed to provide storage, retrieval, and manipulation of data from the computer system; and

(ii) any associated documentation and source material that explain how to operate the computer program.

(b) "Computer program" does not mean:

(i) the original data, including numbers, text, voice, graphics, and images;

(ii) analysis, compilation, and other manipulated forms of the original data produced by use of the program; or

(iii) the mathematical or statistical formulas, excluding the underlying mathematical algorithms contained in the program, that would be used if the manipulated forms of the original data were to be produced manually.

(5)

(a) "Contractor" means:

(i) any person who contracts with a governmental entity to provide goods or services directly to a governmental entity; or

(ii) any private, nonprofit organization that receives funds from a governmental entity.

(b) "Contractor" does not mean a private provider.

(6) "Controlled record" means a record containing data on individuals that is controlled as provided by Section 63G-2-304.

(7) "Designation," "designate," and their derivative forms mean indicating, based on a governmental entity's familiarity with a record series or based on a governmental entity's review of a reasonable sample of a record series, the primary classification that a majority of records in a record series would be given if classified and the classification that other records typically present in the record series would be given if classified.

(8) "Elected official" means each person elected to a state office, county office, municipal office, school board or school district office, local district office, or special service district office, but does not include judges.

(9) "Explosive" means a chemical compound, device, or mixture:

(a) commonly used or intended for the purpose of producing an explosion; and

(b) that contains oxidizing or combustive units or other ingredients in proportions, quantities, or packing so that:

(i) an ignition by fire, friction, concussion, percussion, or detonator of any part of the compound or mixture may cause a sudden generation of highly heated gases; and

(ii) the resultant gaseous pressures are capable of:

(A) producing destructive effects on contiguous objects; or

(B) causing death or serious bodily injury.

(10) "Government audit agency" means any governmental entity that conducts an audit.

(11)

(a) "Governmental entity" means:

(i) executive department agencies of the state, the offices of the governor, lieutenant governor, state auditor, attorney general, and state treasurer, the Board of Pardons and Parole, the Board of Examiners, the National Guard, the Career Service Review Office, the State Board of Education, the State Board of Regents, and the State Archives;

(ii) the Office of the Legislative Auditor General, Office of the Legislative Fiscal Analyst, Office of Legislative Research and General Counsel, the Legislature, and legislative committees, except any political party, group, caucus, or rules or sifting committee of the Legislature;

(iii) courts, the Judicial Council, the Office of the Court Administrator, and similar administrative units in the judicial branch;

(iv) any state-funded institution of higher education or public education; or

(v) any political subdivision of the state, but, if a political subdivision has adopted an

ordinance or a policy relating to information practices pursuant to Section 63G-2-701, this chapter shall apply to the political subdivision to the extent specified in Section 63G-2-701 or as specified in any other section of this chapter that specifically refers to political subdivisions.

(b) "Governmental entity" also means:

(i) every office, agency, board, bureau, committee, department, advisory board, or commission of an entity listed in Subsection (11)(a) that is funded or established by the government to carry out the public's business; and

(ii) as defined in Section 11-13-103, an interlocal entity or joint or cooperative undertaking.

(c) "Governmental entity" does not include the Utah Educational Savings Plan created in Section 53B-8a-103.

(12) "Gross compensation" means every form of remuneration payable for a given period to an individual for services provided including salaries, commissions, vacation pay, severance pay, bonuses, and any board, rent, housing, lodging, payments in kind, and any similar benefit received from the individual's employer.

(13) "Individual" means a human being.

(14)

(a) "Initial contact report" means an initial written or recorded report, however titled, prepared by peace officers engaged in public patrol or response duties describing official actions initially taken in response to either a public complaint about or the discovery of an apparent violation of law, which report may describe:

(i) the date, time, location, and nature of the complaint, the incident, or offense;

(ii) names of victims;

(iii) the nature or general scope of the agency's initial actions taken in response to the incident;

(iv) the general nature of any injuries or estimate of damages sustained in the incident;

(v) the name, address, and other identifying information about any person arrested or charged in connection with the incident; or

(vi) the identity of the public safety personnel, except undercover personnel, or prosecuting attorney involved in responding to the initial incident.

(b) Initial contact reports do not include follow-up or investigative reports prepared after the initial contact report. However, if the information specified in Subsection (14)(a) appears in follow-up or investigative reports, it may only be treated confidentially if it is private, controlled, protected, or exempt from disclosure under Subsection 63G-2-201(3)(b).

(15) "Legislative body" means the Legislature.

(16) "Notice of compliance" means a statement confirming that a governmental entity has complied with a records committee order.

(17) "Person" means:

(a) an individual;

(b) a nonprofit or profit corporation;

(c) a partnership;

(d) a sole proprietorship;

(e) other type of business organization; or

(f) any combination acting in concert with one another.

(18) "Private provider" means any person who contracts with a governmental entity to provide services directly to the public.

(19) "Private record" means a record containing data on individuals that is private as provided by Section 63G-2-302.

(20) "Protected record" means a record that is classified protected as provided by Section 63G-2-305.

(21) "Public record" means a record that is not private, controlled, or protected and that is not exempt from disclosure as provided in Subsection 63G-2-201(3)(b).

(22)

(a) "Record" means a book, letter, document,

paper, map, plan, photograph, film, card, tape, recording, electronic data, or other documentary material regardless of physical form or characteristics:

(i) that is prepared, owned, received, or retained by a governmental entity or political subdivision; and

(ii) where all of the information in the original is reproducible by photocopy or other mechanical or electronic means.

(b) "Record" does not mean:

(i) a personal note or personal communication prepared or received by an employee or officer of a governmental entity:

(A) in a capacity other than the employee's or officer's governmental capacity; or

(B) that is unrelated to the conduct of the public's business;

(ii) a temporary draft or similar material prepared for the originator's personal use or prepared by the originator for the personal use of an individual for whom the originator is working;

(iii) material that is legally owned by an individual in the individual's private capacity;

(iv) material to which access is limited by the laws of copyright or patent unless the copyright or patent is owned by a governmental entity or political subdivision;

(v) proprietary software;

(vi) junk mail or a commercial publication received by a governmental entity or an official or employee of a governmental entity;

(vii) a book that is cataloged, indexed, or inventoried and contained in the collections of a library open to the public;

(viii) material that is cataloged, indexed, or inventoried and contained in the collections of a library open to the public, regardless of physical form or characteristics of the material;

(ix) a daily calendar or other personal note prepared by the originator for the originator's personal use or for the personal use of an individual for whom the originator is working;

(x) a computer program that is developed or purchased by or for any governmental entity for its own use;

(xi) a note or internal memorandum prepared as part of the deliberative process by:

(A) a member of the judiciary;

(B) an administrative law judge;

(C) a member of the Board of Pardons and Parole; or

(D) a member of any other body charged by law with performing a quasi-judicial function;

(xii) a telephone number or similar code used to access a mobile communication device that is used by an employee or officer of a governmental entity, provided that the employee or officer of the governmental entity has designated at least one business telephone number that is a public record as provided in Section 63G-2-301;

(xiii) information provided by the Public Employees' Benefit and Insurance Program, created in Section 49-20-103, to a county to enable the county to calculate the amount to be paid to a health care provider under Subsection 17-50-319(2)(e)(ii);

(xiv) information that an owner of unimproved property provides to a local entity as provided in Section 11-42-205; or

(xv) a video or audio recording of an interview, or a transcript of the video or audio recording, that is conducted at a Children's Justice Center established under Section 67-5b-102.

(23) "Record series" means a group of records that may be treated as a unit for purposes of designation, description, management, or disposition.

(24) "Records committee" means the State Records Committee created in Section 63G-2-501.

(25) "Records officer" means the individual appointed by the chief administrative officer of each governmental entity, or the political subdivision to

work with state archives in the care, maintenance, scheduling, designation, classification, disposal, and preservation of records.
(26) "Schedule," "scheduling," and their derivative forms mean the process of specifying the length of time each record series should be retained by a governmental entity for administrative, legal, fiscal, or historical purposes and when each record series should be transferred to the state archives or destroyed.
(27) "Sponsored research" means research, training, and other sponsored activities as defined by the federal Executive Office of the President, Office of Management and Budget:
(a) conducted:
(i) by an institution within the state system of higher education defined in Section 53B-1-102; and
(ii) through an office responsible for sponsored projects or programs; and
(b) funded or otherwise supported by an external:
(i) person that is not created or controlled by the institution within the state system of higher education; or
(ii) federal, state, or local governmental entity.
(28) "State archives" means the Division of Archives and Records Service created in Section 63A-12-101.
(29) "State archivist" means the director of the state archives.
(30) "Summary data" means statistical records and compilations that contain data derived from private, controlled, or protected information but that do not disclose private, controlled, or protected information.

Amended by Chapter 265, 2015 General Session

63G-2-104 Administrative Procedures Act not applicable.

Title 63G, Chapter 4, Administrative Procedures Act, does not apply to this chapter except as provided in Section 63G-2-603.

Renumbered and Amended by Chapter 382, 2008 General Session

63G-2-105 Confidentiality agreements.

If a governmental entity or political subdivision receives a request for a record that is subject to a confidentiality agreement executed before April 1, 1992, the law in effect at the time the agreement was executed, including late judicial interpretations of the law, shall govern access to the record, unless all parties to the confidentiality agreement agree in writing to be governed by the provisions of this chapter.

Renumbered and Amended by Chapter 382, 2008 General Session

63G-2-106 Records of security measures.

The records of a governmental entity or political subdivision regarding security measures designed for the protection of persons or property, public or private, are not subject to this chapter. These records include:
(1) security plans;
(2) security codes and combinations, and passwords;
(3) passes and keys;
(4) security procedures; and
(5) building and public works designs, to the extent that the records or information relate to the ongoing security measures of a public entity.

Renumbered and Amended by Chapter 382, 2008 General Session

63G-2-107 Disclosure of records subject to federal law.
(1) Notwithstanding Subsection 63G-2-201(6), this chapter does not apply to a record containing protected health information as defined in 45 C.F.R., Part 164, Standards for Privacy of

Individually Identifiable Health Information, if the record is:

(a) controlled or maintained by a governmental entity; and

(b) governed by 45 C.F.R., Parts 160 and 164, Standards for Privacy of Individually Identifiable Health Information.

(2) The disclosure of an education record as defined in the Family Educational Rights and Privacy Act, 34 C.F.R. Part 99, that is controlled or maintained by a governmental entity shall be governed by the Family Educational Rights and Privacy Act, 34 C.F.R. Part 99.

Amended by Chapter 380, 2016 General Session

63G-2-108 Certification of records officer.

Each records officer of a governmental entity or political subdivision shall, on an annual basis, successfully complete online training and obtain certification from state archives in accordance with Section 63A-12-110.

Enacted by Chapter 377, 2012 General Session

Part 2
Access to Records

63G-2-201 Right to inspect records and receive copies of records.

(1) Every person has the right to inspect a public record free of charge, and the right to take a copy of a public record during normal working hours, subject to Sections 63G-2-203 and 63G-2-204.

(2) A record is public unless otherwise expressly provided by statute.

(3) The following records are not public:

(a) a record that is private, controlled, or protected under Sections 63G-2-302, 63G-2-303, 63G-2-304, and 63G-2-305; and

(b) a record to which access is restricted pursuant to court rule, another state statute, federal statute, or federal regulation, including records for which access is governed or restricted as a condition of participation in a state or federal program or for receiving state or federal funds.

(4) Only a record specified in Section 63G-2-302, 63G-2-303, 63G-2-304, or 63G-2-305 may be classified private, controlled, or protected.

(5)

(a) A governmental entity may not disclose a record that is private, controlled, or protected to any person except as provided in Subsection (5)(b), Subsection (5)(c), Section 63G-2-202, 63G-2-206, or 63G-2-303.

(b) A governmental entity may disclose a record that is private under Subsection 63G-2-302(2) or protected under Section 63G-2-305 to persons other than those specified in Section 63G-2-202 or 63G-2-206 if the head of a governmental entity, or a designee, determines that:

(i) there is no interest in restricting access to the record; or

(ii) the interests favoring access are greater than or equal to the interest favoring restriction of access.

(c) In addition to the disclosure under Subsection (5)(b), a governmental entity may disclose a record that is protected under Subsection 63G-2-305(51) if:

(i) the head of the governmental entity, or a designee, determines that the disclosure:

(A) is mutually beneficial to:

(I) the subject of the record;

(II) the governmental entity; and

(III) the public; and

(B) serves a public purpose related to:

(I) public safety; or

(II) consumer protection; and

(ii) the person who receives the record from the governmental entity agrees not to use or allow the use of the record for advertising or solicitation purposes.

(6)

(a) The disclosure of a record to which access is

governed or limited pursuant to court rule, another state statute, federal statute, or federal regulation, including a record for which access is governed or limited as a condition of participation in a state or federal program or for receiving state or federal funds, is governed by the specific provisions of that statute, rule, or regulation.

(b) This chapter applies to records described in Subsection (6)(a) insofar as this chapter is not inconsistent with the statute, rule, or regulation.

(7) A governmental entity shall provide a person with a certified copy of a record if:

(a) the person requesting the record has a right to inspect it;

(b) the person identifies the record with reasonable specificity; and

(c) the person pays the lawful fees.

(8)

(a) In response to a request, a governmental entity is not required to:

(i) create a record;

(ii) compile, format, manipulate, package, summarize, or tailor information;

(iii) provide a record in a particular format, medium, or program not currently maintained by the governmental entity;

(iv) fulfill a person's records request if the request unreasonably duplicates prior records requests from that person; or

(v) fill a person's records request if:

(A) the record requested is accessible in the identical physical form and content in a public publication or product produced by the governmental entity receiving the request;

(B) the governmental entity provides the person requesting the record with the public publication or product; and

(C) the governmental entity specifies where the record can be found in the public publication or product.

(b) Upon request, a governmental entity may provide a record in a particular form under Subsection (8)(a)(ii) or (iii) if:

(i) the governmental entity determines it is able to do so without unreasonably interfering with the governmental entity's duties and responsibilities; and

(ii) the requester agrees to pay the governmental entity for providing the record in the requested form in accordance with Section 63G-2-203.

(9)

(a) A governmental entity may allow a person requesting more than 50 pages of records to copy the records if:

(i) the records are contained in files that do not contain records that are exempt from disclosure, or the records may be segregated to remove private, protected, or controlled information from disclosure; and

(ii) the governmental entity provides reasonable safeguards to protect the public from the potential for loss of a public record.

(b) When the requirements of Subsection (9)(a) are met, the governmental entity may:

(i) provide the requester with the facilities for copying the requested records and require that the requester make the copies; or

(ii) allow the requester to provide the requester's own copying facilities and personnel to make the copies at the governmental entity's offices and waive the fees for copying the records.

(10)

(a) A governmental entity that owns an intellectual property right and that offers the intellectual property right for sale or license may control by ordinance or policy the duplication and distribution of the material based on terms the governmental entity considers to be in the public interest.

(b) Nothing in this chapter shall be construed to limit or impair the rights or protections granted to the governmental entity under federal copyright or patent law as a result of its ownership of the

intellectual property right.
(11) A governmental entity may not use the physical form, electronic or otherwise, in which a record is stored to deny, or unreasonably hinder the rights of a person to inspect and receive a copy of a record under this chapter.
(12) Subject to the requirements of Subsection (8), a governmental entity shall provide access to an electronic copy of a record in lieu of providing access to its paper equivalent if:
(a) the person making the request requests or states a preference for an electronic copy;
(b) the governmental entity currently maintains the record in an electronic format that is reproducible and may be provided without reformatting or conversion; and
(c) the electronic copy of the record:
(i) does not disclose other records that are exempt from disclosure; or
(ii) may be segregated to protect private, protected, or controlled information from disclosure without the undue expenditure of public resources or funds.
(13) In determining whether a record is properly classified as private under Subsection 63G-2-302(2)(d), the governmental entity, State Records Committee, local appeals board, or court shall consider and weigh:
(a) any personal privacy interests, including those in images, that would be affected by disclosure of the records in question; and
(b) any public interests served by disclosure.

Amended by Chapter 410, 2016 General Session

63G-2-202 Access to private, controlled, and protected documents.
(1) Upon request, and except as provided in Subsection (11)(a), a governmental entity shall disclose a private record to:
(a) the subject of the record;
(b) the parent or legal guardian of an unemancipated minor who is the subject of the record;
(c) the legal guardian of a legally incapacitated individual who is the subject of the record;
(d) any other individual who:
(i) has a power of attorney from the subject of the record;
(ii) submits a notarized release from the subject of the record or the individual's legal representative dated no more than 90 days before the date the request is made; or
(iii) if the record is a medical record described in Subsection 63G-2-302(1)(b), is a health care provider, as defined in Section 26-33a-102, if releasing the record or information in the record is consistent with normal professional practice and medical ethics; or
(e) any person to whom the record must be provided pursuant to:
(i) court order as provided in Subsection (7); or
(ii) a legislative subpoena as provided in Title 36, Chapter 14, Legislative Subpoena Powers.
(2)
(a) Upon request, a governmental entity shall disclose a controlled record to:
(i) a physician, psychologist, certified social worker, insurance provider or producer, or a government public health agency upon submission of:
(A) a release from the subject of the record that is dated no more than 90 days prior to the date the request is made; and
(B) a signed acknowledgment of the terms of disclosure of controlled information as provided by Subsection (2)(b); and
(ii) any person to whom the record must be disclosed pursuant to:
(A) a court order as provided in Subsection (7); or
(B) a legislative subpoena as provided in Title 36, Chapter 14, Legislative Subpoena Powers.
(b) A person who receives a record from a

governmental entity in accordance with Subsection (2)(a)(i) may not disclose controlled information from that record to any person, including the subject of the record.

(3) If there is more than one subject of a private or controlled record, the portion of the record that pertains to another subject shall be segregated from the portion that the requester is entitled to inspect.

(4) Upon request, and except as provided in Subsection (10) or (11)(b), a governmental entity shall disclose a protected record to:

(a) the person that submitted the record;

(b) any other individual who:

(i) has a power of attorney from all persons, governmental entities, or political subdivisions whose interests were sought to be protected by the protected classification; or

(ii) submits a notarized release from all persons, governmental entities, or political subdivisions whose interests were sought to be protected by the protected classification or from their legal representatives dated no more than 90 days prior to the date the request is made;

(c) any person to whom the record must be provided pursuant to:

(i) a court order as provided in Subsection (7); or

(ii) a legislative subpoena as provided in Title 36, Chapter 14, Legislative Subpoena Powers; or

(d) the owner of a mobile home park, subject to the conditions of Subsection 41-1a-116(5).

(5) A governmental entity may disclose a private, controlled, or protected record to another governmental entity, political subdivision, state, the United States, or a foreign government only as provided by Section 63G-2-206.

(6) Before releasing a private, controlled, or protected record, the governmental entity shall obtain evidence of the requester's identity.

(7) A governmental entity shall disclose a record pursuant to the terms of a court order signed by a judge from a court of competent jurisdiction, provided that:

(a) the record deals with a matter in controversy over which the court has jurisdiction;

(b) the court has considered the merits of the request for access to the record;

(c) the court has considered and, where appropriate, limited the requester's use and further disclosure of the record in order to protect:

(i) privacy interests in the case of private or controlled records;

(ii) business confidentiality interests in the case of records protected under Subsection 63G-2-305(1), (2), (40)(a)(ii), or (40)(a)(vi); and

(iii) privacy interests or the public interest in the case of other protected records;

(d) to the extent the record is properly classified private, controlled, or protected, the interests favoring access, considering limitations thereon, are greater than or equal to the interests favoring restriction of access; and

(e) where access is restricted by a rule, statute, or regulation referred to in Subsection 63G-2-201(3)(b), the court has authority independent of this chapter to order disclosure.

(8)

(a) Except as provided in Subsection (8)(d), a governmental entity may disclose or authorize disclosure of private or controlled records for research purposes if the governmental entity:

(i) determines that the research purpose cannot reasonably be accomplished without use or disclosure of the information to the researcher in individually identifiable form;

(ii) determines that:

(A) the proposed research is bona fide; and

(B) the value of the research is greater than or equal to the infringement upon personal privacy;

(iii)

(A) requires the researcher to assure the integrity, confidentiality, and security of the records; and

(B) requires the removal or destruction of the individual identifiers associated with the records as soon as the purpose of the research project has been accomplished;

(iv) prohibits the researcher from:

(A) disclosing the record in individually identifiable form, except as provided in Subsection (8)(b); or

(B) using the record for purposes other than the research approved by the governmental entity; and

(v) secures from the researcher a written statement of the researcher's understanding of and agreement to the conditions of this Subsection (8) and the researcher's understanding that violation of the terms of this Subsection (8) may subject the researcher to criminal prosecution under Section 63G-2-801.

(b) A researcher may disclose a record in individually identifiable form if the record is disclosed for the purpose of auditing or evaluating the research program and no subsequent use or disclosure of the record in individually identifiable form will be made by the auditor or evaluator except as provided by this section.

(c) A governmental entity may require indemnification as a condition of permitting research under this Subsection (8).

(d) A governmental entity may not disclose or authorize disclosure of a private record for research purposes as described in this Subsection (8) if the private record is a record described in Subsection 63G-2-302(1)(u).

(9)

(a) Under Subsections 63G-2-201(5)(b) and 63G-2-401(6), a governmental entity may disclose to persons other than those specified in this section records that are:

(i) private under Section 63G-2-302; or

(ii) protected under Section 63G-2-305, subject to Section 63G-2-309 if a claim for business confidentiality has been made under Section 63G-2-309.

(b) Under Subsection 63G-2-403(11)(b), the records committee may require the disclosure to persons other than those specified in this section of records that are:

(i) private under Section 63G-2-302;

(ii) controlled under Section 63G-2-304; or

(iii) protected under Section 63G-2-305, subject to Section 63G-2-309 if a claim for business confidentiality has been made under Section 63G-2-309.

(c) Under Subsection 63G-2-404(7), the court may require the disclosure of records that are private under Section 63G-2-302, controlled under Section 63G-2-304, or protected under Section 63G-2-305 to persons other than those specified in this section.

(10) A record contained in the Management Information System, created in Section 62A-4a-1003, that is found to be unsubstantiated, unsupported, or without merit may not be disclosed to any person except the person who is alleged in the report to be a perpetrator of abuse, neglect, or dependency.

(11)

(a) A private record described in Subsection 63G-2-302(2)(f) may only be disclosed as provided in Subsection (1)(e).

(b) A protected record described in Subsection 63G-2-305(43) may only be disclosed as provided in Subsection (4)(c) or Section 62A-3-312.

(12)

(a) A private, protected, or controlled record described in Section 62A-16-301 shall be disclosed as required under:

(i) Subsections 62A-16-301(1)(b), (2), and (4)(c); and

(ii) Subsections 62A-16-302(1) and (6).

(b) A record disclosed under Subsection (12)(a) shall retain its character as private, protected, or controlled.

Amended by Chapter 348, 2016 General Session

63G-2-203 Fees.

(1) A governmental entity may charge a reasonable fee to cover the governmental entity's actual cost of providing a record. This fee shall be approved by the governmental entity's executive officer.

(2)

(a) When a governmental entity compiles a record in a form other than that normally maintained by the governmental entity, the actual costs under this section may include the following:

(i) the cost of staff time for compiling, formatting, manipulating, packaging, summarizing, or tailoring the record either into an organization or media to meet the person's request;

(ii) the cost of staff time for search, retrieval, and other direct administrative costs for complying with a request; and

(iii) in the case of fees for a record that is the result of computer output other than word processing, the actual incremental cost of providing the electronic services and products together with a reasonable portion of the costs associated with formatting or interfacing the information for particular users, and the administrative costs as set forth in Subsections (2)(a)(i) and (ii).

(b) An hourly charge under Subsection (2)(a) may not exceed the salary of the lowest paid employee who, in the discretion of the custodian of records, has the necessary skill and training to perform the request.

(c) Notwithstanding Subsections (2)(a) and (b), no charge may be made for the first quarter hour of staff time.

(3)

(a) Fees shall be established as provided in this Subsection (3).

(b) A governmental entity with fees established by the Legislature:

(i) shall establish the fees defined in Subsection (2), or other actual costs associated with this section through the budget process; and

(ii) may use the procedures of Section 63J-1-504 to set fees until the Legislature establishes fees through the budget process.

(c) Political subdivisions shall establish fees by ordinance or written formal policy adopted by the governing body.

(d) The judiciary shall establish fees by rules of the judicial council.

(4) A governmental entity may fulfill a record request without charge and is encouraged to do so if it determines that:

(a) releasing the record primarily benefits the public rather than a person;

(b) the individual requesting the record is the subject of the record, or an individual specified in Subsection 63G-2-202(1) or (2); or

(c) the requester's legal rights are directly implicated by the information in the record, and the requester is impecunious.

(5) A governmental entity may not charge a fee for:

(a) reviewing a record to determine whether it is subject to disclosure, except as permitted by Subsection (2)(a)(ii); or

(b) inspecting a record.

(6)

(a) A person who believes that there has been an unreasonable denial of a fee waiver under Subsection (4) may appeal the denial in the same manner as a person appeals when inspection of a public record is denied under Section 63G-2-205.

(b) The adjudicative body hearing the appeal:

(i) shall review the fee waiver de novo, but shall review and consider the governmental entity's denial of the fee waiver and any

determination under Subsection (4); and
(ii) has the same authority when a fee waiver or reduction is denied as it has when the inspection of a public record is denied.

(7)
(a) All fees received under this section by a governmental entity subject to Subsection (3)(b) shall be retained by the governmental entity as a dedicated credit.
(b) Those funds shall be used to recover the actual cost and expenses incurred by the governmental entity in providing the requested record or record series.

(8)
(a) A governmental entity may require payment of past fees and future estimated fees before beginning to process a request if:
(i) fees are expected to exceed $50; or
(ii) the requester has not paid fees from previous requests.
(b) Any prepaid amount in excess of fees due shall be returned to the requester.

(9) This section does not alter, repeal, or reduce fees established by other statutes or legislative acts.

(10)
(a) Notwithstanding Subsection (3)(c), fees for voter registration records shall be set as provided in this Subsection (10).
(b) The lieutenant governor shall:
(i) after consultation with county clerks, establish uniform fees for voter registration and voter history records that meet the requirements of this section; and
(ii) obtain legislative approval of those fees by following the procedures and requirements of Section 63J-1-504.

Amended by Chapter 90, 2016 General Session

63G-2-204 Requests -- Time limit for response and extraordinary circumstances.

(1) A person making a request for a record shall furnish the governmental entity with a written request containing:
(a) the person's name, mailing address, and daytime telephone number, if available; and
(b) a description of the record requested that identifies the record with reasonable specificity.

(2)
(a) Subject to Subsection (2)(b), a person making a request for a record shall submit the request to the governmental entity that prepares, owns, or retains the record.
(b) In response to a request for a record, a governmental entity may not provide a record that it has received under Section 63G-2-206 as a shared record if the record was shared for the purpose of auditing, if the governmental entity is authorized by state statute to conduct an audit.
(c) If a governmental entity is prohibited from providing a record under Subsection (2)(b), it shall:
(i) deny the records request; and
(ii) inform the person making the request that records requests must be submitted to the governmental entity that prepares, owns, or retains the record.
(d) A governmental entity may make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, specifying where and to whom requests for access shall be directed.

(3) After receiving a request for a record, a governmental entity shall:
(a) review each request that seeks an expedited response and notify, within five business days after receiving the request, each requester that has not demonstrated that their record request benefits the public rather than the person that their response will not be expedited; and
(b) as soon as reasonably possible, but no later than 10 business days after receiving a written request, or five business days after receiving a written request if the requester demonstrates that expedited response to the record request

benefits the public rather than the person:
(i) approve the request and provide a copy of the record;
(ii) deny the request in accordance with the procedures and requirements of Section 63G-2-205;
(iii) notify the requester that it does not maintain the record requested and provide, if known, the name and address of the governmental entity that does maintain the record; or
(iv) notify the requester that because of one of the extraordinary circumstances listed in Subsection (5), it cannot immediately approve or deny the request, and include with the notice:
(A) a description of the circumstances that constitute the extraordinary circumstances; and
(B) the date when the records will be available, consistent with the requirements of Subsection (6).

(4) Any person who requests a record to obtain information for a story or report for publication or broadcast to the general public is presumed to be acting to benefit the public rather than a person.

(5) The following circumstances constitute "extraordinary circumstances" that allow a governmental entity to delay approval or denial by an additional period of time as specified in Subsection (6) if the governmental entity determines that due to the extraordinary circumstances it cannot respond within the time limits provided in Subsection (3):
(a) another governmental entity is using the record, in which case the originating governmental entity shall promptly request that the governmental entity currently in possession return the record;
(b) another governmental entity is using the record as part of an audit, and returning the record before the completion of the audit would impair the conduct of the audit;
(c)
(i) the request is for a voluminous quantity of records or a record series containing a substantial number of records; or
(ii) the requester seeks a substantial number of records or records series in requests filed within five working days of each other;
(d) the governmental entity is currently processing a large number of records requests;
(e) the request requires the governmental entity to review a large number of records to locate the records requested;
(f) the decision to release a record involves legal issues that require the governmental entity to seek legal counsel for the analysis of statutes, rules, ordinances, regulations, or case law;
(g) segregating information that the requester is entitled to inspect from information that the requester is not entitled to inspect requires extensive editing; or
(h) segregating information that the requester is entitled to inspect from information that the requester is not entitled to inspect requires computer programming.

(6) If one of the extraordinary circumstances listed in Subsection (5) precludes approval or denial within the time specified in Subsection (3), the following time limits apply to the extraordinary circumstances:
(a) for claims under Subsection (5)(a), the governmental entity currently in possession of the record shall return the record to the originating entity within five business days of the request for the return unless returning the record would impair the holder's work;
(b) for claims under Subsection (5)(b), the originating governmental entity shall notify the requester when the record is available for inspection and copying;
(c) for claims under Subsections (5)(c), (d), and (e), the governmental entity shall:
(i) disclose the records that it has located which the requester is entitled to inspect;

(ii) provide the requester with an estimate of the amount of time it will take to finish the work required to respond to the request;
(iii) complete the work and disclose those records that the requester is entitled to inspect as soon as reasonably possible; and
(iv) for any person that does not establish a right to an expedited response as authorized by Subsection (3), a governmental entity may choose to:
(A) require the person to provide for copying of the records as provided in Subsection 63G-2-201(9); or
(B) treat a request for multiple records as separate record requests, and respond sequentially to each request;
(d) for claims under Subsection (5)(f), the governmental entity shall either approve or deny the request within five business days after the response time specified for the original request has expired;
(e) for claims under Subsection (5)(g), the governmental entity shall fulfill the request within 15 business days from the date of the original request; or
(f) for claims under Subsection (5)(h), the governmental entity shall complete its programming and disclose the requested records as soon as reasonably possible.
(7)
(a) If a request for access is submitted to an office of a governmental entity other than that specified by rule in accordance with Subsection (2), the office shall promptly forward the request to the appropriate office.
(b) If the request is forwarded promptly, the time limit for response begins when the record is received by the office specified by rule.
(8) If the governmental entity fails to provide the requested records or issue a denial within the specified time period, that failure is considered the equivalent of a determination denying access to the record.

Amended by Chapter 340, 2011 General Session

63G-2-205 Denials.
(1) If the governmental entity denies the request in whole or part, it shall provide a notice of denial to the requester either in person or by sending the notice to the requester's address.
(2) The notice of denial shall contain the following information:
(a) a description of the record or portions of the record to which access was denied, provided that the description does not disclose private, controlled, or protected information or information exempt from disclosure under Subsection 63G-2-201(3)(b);
(b) citations to the provisions of this chapter, court rule or order, another state statute, federal statute, or federal regulation that exempt the record or portions of the record from disclosure, provided that the citations do not disclose private, controlled, or protected information or information exempt from disclosure under Subsection 63G-2-201(3)(b);
(c) a statement that the requester has the right to appeal the denial to the chief administrative officer of the governmental entity; and
(d) the time limits for filing an appeal, and the name and business address of the chief administrative officer of the governmental entity.
(3) Unless otherwise required by a court or agency of competent jurisdiction, a governmental entity may not destroy or give up custody of any record to which access was denied until the period for an appeal has expired or the end of the appeals process, including judicial appeal.

Renumbered and Amended by Chapter 382, 2008 General Session

63G-2-206 Sharing records.
(1) A governmental entity may provide a record that is private, controlled, or protected to another

governmental entity, a government-managed corporation, a political subdivision, the federal government, or another state if the requesting entity:

(a) serves as a repository or archives for purposes of historical preservation, administrative maintenance, or destruction;

(b) enforces, litigates, or investigates civil, criminal, or administrative law, and the record is necessary to a proceeding or investigation;

(c) is authorized by state statute to conduct an audit and the record is needed for that purpose;

(d) is one that collects information for presentence, probationary, or parole purposes; or

(e)

(i) is:

(A) the Legislature;

(B) a legislative committee;

(C) a member of the Legislature; or

(D) a legislative staff member acting at the request of the Legislature, a legislative committee, or a member of the Legislature; and

(ii) requests the record in relation to the Legislature's duties including:

(A) the preparation or review of a legislative proposal or legislation;

(B) appropriations; or

(C) an investigation or review conducted by the Legislature or a legislative committee.

(2)

(a) A governmental entity may provide a private, controlled, or protected record or record series to another governmental entity, a political subdivision, a government-managed corporation, the federal government, or another state if the requesting entity provides written assurance:

(i) that the record or record series is necessary to the performance of the governmental entity's duties and functions;

(ii) that the record or record series will be used for a purpose similar to the purpose for which the information in the record or record series was collected or obtained; and

(iii) that the use of the record or record series produces a public benefit that is greater than or equal to the individual privacy right that protects the record or record series.

(b) A governmental entity may provide a private, controlled, or protected record or record series to a contractor or a private provider according to the requirements of Subsection (6)(b).

(3)

(a) A governmental entity shall provide a private, controlled, or protected record to another governmental entity, a political subdivision, a government-managed corporation, the federal government, or another state if the requesting entity:

(i) is entitled by law to inspect the record;

(ii) is required to inspect the record as a condition of participating in a state or federal program or for receiving state or federal funds; or

(iii) is an entity described in Subsection (1)(a), (b), (c), (d), or (e).

(b) Subsection (3)(a)(iii) applies only if the record is a record described in Subsection 63G-2-305(4).

(4) Before disclosing a record or record series under this section to another governmental entity, another state, the United States, a foreign government, or to a contractor or private provider, the originating governmental entity shall:

(a) inform the recipient of the record's classification and the accompanying restrictions on access; and

(b) if the recipient is not a governmental entity to which this chapter applies, obtain the recipient's written agreement which may be by mechanical or electronic transmission that it will abide by those restrictions on access unless a statute, federal regulation, or interstate agreement otherwise governs the sharing of the record or record series.

(5) A governmental entity may disclose a record to another state, the United States, or a foreign government for the reasons listed in Subsections (1) and (2) without complying with the procedures of Subsection (2) or (4) if disclosure is authorized by executive agreement, treaty, federal statute, compact, federal regulation, or state statute.
(6)
(a) Subject to Subsections (6)(b) and (c), an entity receiving a record under this section is subject to the same restrictions on disclosure of the record as the originating entity.
(b) A contractor or a private provider may receive information under this section only if:
(i) the contractor or private provider's use of the record or record series produces a public benefit that is greater than or equal to the individual privacy right that protects the record or record series;
(ii) the record or record series it requests:
(A) is necessary for the performance of a contract with a governmental entity;
(B) will only be used for the performance of the contract with the governmental entity;
(C) will not be disclosed to any other person; and
(D) will not be used for advertising or solicitation purposes; and
(iii) the contractor or private provider gives written assurance to the governmental entity that is providing the record or record series that it will adhere to the restrictions of this Subsection (6)(b).
(c) The classification of a record already held by a governmental entity and the applicable restrictions on disclosure of that record are not affected by the governmental entity's receipt under this section of a record with a different classification that contains information that is also included in the previously held record.
(7) Notwithstanding any other provision of this section, if a more specific court rule or order, state statute, federal statute, or federal regulation prohibits or requires sharing information, that rule, order, statute, or federal regulation controls.
(8) The following records may not be shared under this section:
(a) records held by the Division of Oil, Gas, and Mining that pertain to any person and that are gathered under authority of Title 40, Chapter 6, Board and Division of Oil, Gas, and Mining;
(b) records of publicly funded libraries as described in Subsection 63G-2-302(1)(c); and
(c) a record described in Section 63G-12-210.
(9) Records that may evidence or relate to a violation of law may be disclosed to a government prosecutor, peace officer, or auditor.

Amended by Chapter 377, 2012 General Session

63G-2-207 Subpoenas -- Court ordered disclosure for discovery.
(1) Subpoenas and other methods of discovery under the state or federal statutes or rules of civil, criminal, administrative, or legislative procedure are not written requests under Section 63G-2-204.
(2)
(a)
(i) Except as otherwise provided in Subsection (2)(c), in judicial or administrative proceedings in which an individual is requesting discovery of records classified private, controlled, or protected under this chapter, or otherwise restricted from access by other statutes, the court, or an administrative law judge shall follow the procedure in Subsection 63G-2-202(7) before ordering disclosure.
(ii) Until the court or an administrative law judge orders disclosure, these records are privileged from discovery.
(b) If, the court or administrative order requires disclosure, the terms of the order may limit the requester's further use and disclosure of the record in accordance with Subsection 63G-2-202(7), in order to protect the privacy interests recognized in this chapter.

(c) Unless a court or administrative law judge imposes limitations in a restrictive order, this section does not limit the right to obtain:
(i) records through the procedures set forth in this chapter; or
(ii) medical records discoverable under state or federal court rules as authorized by Subsection 63G-2-302(3).

Renumbered and Amended by Chapter 382, 2008 General Session

63G-2-208 Public repository of legislative email.
(1) As used in this section, "repository" means the repository of email described in Subsection (2).
(2)
(a) On or before January 1, 2014, the Legislature shall post on its website a publicly accessible repository containing email that legislators transfer to it as provided in this section.
(b) The repository shall be searchable by sender, receiver, and subject.
(3) A legislator may transfer to the repository an email that the legislator sent or received.
(4) An email in the repository may be removed from the repository if:
(a) the email was accidentally transferred to the repository;
(b) it is determined that the email is not a record or that the email is a private, protected, or controlled record;
(c) the email is deleted pursuant to the Legislature's record retention policy; or
(d) for an email that is not removed from the repository earlier under Subsection (4)(a), (b), or (c), at least two years have passed after the day the legislator first sent or received the email.
(5) A legislator's failure to transfer an email to the repository does not alone mean that the email is a private, protected, or controlled record.

Enacted by Chapter 231, 2013 General Session

Part 3
Classification

63G-2-301 Public records.
(1) As used in this section:
(a) "Business address" means a single address of a governmental agency designated for the public to contact an employee or officer of the governmental agency.
(b) "Business email address" means a single email address of a governmental agency designated for the public to contact an employee or officer of the governmental agency.
(c) "Business telephone number" means a single telephone number of a governmental agency designated for the public to contact an employee or officer of the governmental agency.
(2) The following records are public except to the extent they contain information expressly permitted to be treated confidentially under the provisions of Subsections 63G-2-201(3)(b) and (6)(a):
(a) laws;
(b) the name, gender, gross compensation, job title, job description, business address, business email address, business telephone number, number of hours worked per pay period, dates of employment, and relevant education, previous employment, and similar job qualifications of a current or former employee or officer of the governmental entity, excluding:
(i) undercover law enforcement personnel; and
(ii) investigative personnel if disclosure could reasonably be expected to impair the effectiveness of investigations or endanger any individual's safety;
(c) final opinions, including concurring and dissenting opinions, and orders that are made by a governmental entity in an administrative, adjudicative, or judicial proceeding except that if the proceedings were properly closed to the public, the opinion and order may be withheld to the extent that they contain information that is private, controlled, or protected;

(d) final interpretations of statutes or rules by a governmental entity unless classified as protected as provided in Subsection 63G-2-305(17) or (18);
(e) information contained in or compiled from a transcript, minutes, or report of the open portions of a meeting of a governmental entity as provided by Title 52, Chapter 4, Open and Public Meetings Act, including the records of all votes of each member of the governmental entity;
(f) judicial records unless a court orders the records to be restricted under the rules of civil or criminal procedure or unless the records are private under this chapter;
(g) unless otherwise classified as private under Section 63G-2-303, records or parts of records filed with or maintained by county recorders, clerks, treasurers, surveyors, zoning commissions, the Division of Forestry, Fire, and State Lands, the School and Institutional Trust Lands Administration, the Division of Oil, Gas, and Mining, the Division of Water Rights, or other governmental entities that give public notice of:
(i) titles or encumbrances to real property;
(ii) restrictions on the use of real property;
(iii) the capacity of persons to take or convey title to real property; or
(iv) tax status for real and personal property;
(h) records of the Department of Commerce that evidence incorporations, mergers, name changes, and uniform commercial code filings;
(i) data on individuals that would otherwise be private under this chapter if the individual who is the subject of the record has given the governmental entity written permission to make the records available to the public;
(j) documentation of the compensation that a governmental entity pays to a contractor or private provider;
(k) summary data;
(l) voter registration records, including an individual's voting history, except for a voter registration record or those parts of a voter registration record that are classified as private under Subsection 63G-2-302(1)(j) or (k);
(m) for an elected official, as defined in Section 11-47-102, a telephone number, if available, and email address, if available, where that elected official may be reached as required in Title 11, Chapter 47, Access to Elected Officials;
(n) for a school community council member, a telephone number, if available, and email address, if available, where that elected official may be reached directly as required in Section 53A-1a-108.1;
(o) annual audited financial statements of the Utah Educational Savings Plan described in Section 53B-8a-111; and
(p) an initiative packet, as defined in Section 20A-7-101, and a referendum packet, as defined in Section 20A-7-101, after the packet is submitted to a county clerk.
(3) The following records are normally public, but to the extent that a record is expressly exempt from disclosure, access may be restricted under Subsection 63G-2-201(3)(b), Section 63G-2-302, 63G-2-304, or 63G-2-305:
(a) administrative staff manuals, instructions to staff, and statements of policy;
(b) records documenting a contractor's or private provider's compliance with the terms of a contract with a governmental entity;
(c) records documenting the services provided by a contractor or a private provider to the extent the records would be public if prepared by the governmental entity;
(d) contracts entered into by a governmental entity;
(e) any account, voucher, or contract that deals with the receipt or expenditure of funds by a governmental entity;
(f) records relating to government assistance or incentives publicly disclosed, contracted for, or given by a governmental entity, encouraging a person to expand or relocate a business in Utah, except as provided in Subsection 63G-2-305(35);

(g) chronological logs and initial contact reports;
(h) correspondence by and with a governmental entity in which the governmental entity determines or states an opinion upon the rights of the state, a political subdivision, the public, or any person;
(i) empirical data contained in drafts if:
(i) the empirical data is not reasonably available to the requester elsewhere in similar form; and
(ii) the governmental entity is given a reasonable opportunity to correct any errors or make nonsubstantive changes before release;
(j) drafts that are circulated to anyone other than:
(i) a governmental entity;
(ii) a political subdivision;
(iii) a federal agency if the governmental entity and the federal agency are jointly responsible for implementation of a program or project that has been legislatively approved;
(iv) a government-managed corporation; or
(v) a contractor or private provider;
(k) drafts that have never been finalized but were relied upon by the governmental entity in carrying out action or policy;
(l) original data in a computer program if the governmental entity chooses not to disclose the program;
(m) arrest warrants after issuance, except that, for good cause, a court may order restricted access to arrest warrants prior to service;
(n) search warrants after execution and filing of the return, except that a court, for good cause, may order restricted access to search warrants prior to trial;
(o) records that would disclose information relating to formal charges or disciplinary actions against a past or present governmental entity employee if:
(i) the disciplinary action has been completed and all time periods for administrative appeal have expired; and
(ii) the charges on which the disciplinary action was based were sustained;
(p) records maintained by the Division of Forestry, Fire, and State Lands, the School and Institutional Trust Lands Administration, or the Division of Oil, Gas, and Mining that evidence mineral production on government lands;
(q) final audit reports;
(r) occupational and professional licenses;
(s) business licenses; and
(t) a notice of violation, a notice of agency action under Section 63G-4-201, or similar records used to initiate proceedings for discipline or sanctions against persons regulated by a governmental entity, but not including records that initiate employee discipline.
(4) The list of public records in this section is not exhaustive and should not be used to limit access to records.

Amended by Chapter 373, 2014 General Session

63G-2-302 Private records.
(1) The following records are private:
(a) records concerning an individual's eligibility for unemployment insurance benefits, social services, welfare benefits, or the determination of benefit levels;
(b) records containing data on individuals describing medical history, diagnosis, condition, treatment, evaluation, or similar medical data;
(c) records of publicly funded libraries that when examined alone or with other records identify a patron;
(d) records received by or generated by or for:
(i) the Independent Legislative Ethics Commission, except for:
(A) the commission's summary data report that is required under legislative rule; and
(B) any other document that is classified as public under legislative rule; or
(ii) a Senate or House Ethics Committee in relation to the review of ethics complaints, unless the record is classified as public under

legislative rule;
(e) records received by, or generated by or for, the Independent Executive Branch Ethics Commission, except as otherwise expressly provided in Title 63A, Chapter 14, Review of Executive Branch Ethics Complaints;
(f) records received or generated for a Senate confirmation committee concerning character, professional competence, or physical or mental health of an individual:
(i) if, prior to the meeting, the chair of the committee determines release of the records:
(A) reasonably could be expected to interfere with the investigation undertaken by the committee; or
(B) would create a danger of depriving a person of a right to a fair proceeding or impartial hearing; and
(ii) after the meeting, if the meeting was closed to the public;
(g) employment records concerning a current or former employee of, or applicant for employment with, a governmental entity that would disclose that individual's home address, home telephone number, social security number, insurance coverage, marital status, or payroll deductions;
(h) records or parts of records under Section 63G-2-303 that a current or former employee identifies as private according to the requirements of that section;
(i) that part of a record indicating a person's social security number or federal employer identification number if provided under Section 31A-23a-104, 31A-25-202, 31A-26-202, 58-1-301, 58-55-302, 61-1-4, or 61-2f-203;
(j) that part of a voter registration record identifying a voter's:
(i) driver license or identification card number;
(ii) Social Security number, or last four digits of the Social Security number;
(iii) email address; or
(iv) date of birth;
(k) a voter registration record that is classified as a private record by the lieutenant governor or a county clerk under Subsection 20A-2-104(4)(f) or 20A-2-101.1(5)(a);
(l) a record that:
(i) contains information about an individual;
(ii) is voluntarily provided by the individual; and
(iii) goes into an electronic database that:
(A) is designated by and administered under the authority of the Chief Information Officer; and
(B) acts as a repository of information about the individual that can be electronically retrieved and used to facilitate the individual's online interaction with a state agency;
(m) information provided to the Commissioner of Insurance under:
(i) Subsection 31A-23a-115(2)(a);
(ii) Subsection 31A-23a-302(3); or
(iii) Subsection 31A-26-210(3);
(n) information obtained through a criminal background check under Title 11, Chapter 40, Criminal Background Checks by Political Subdivisions Operating Water Systems;
(o) information provided by an offender that is:
(i) required by the registration requirements of Title 77, Chapter 41, Sex and Kidnap Offender Registry; and
(ii) not required to be made available to the public under Subsection 77-41-110(4);
(p) a statement and any supporting documentation filed with the attorney general in accordance with Section 34-45-107, if the federal law or action supporting the filing involves homeland security;
(q) electronic toll collection customer account information received or collected under Section 72-6-118 and customer information described in Section 17B-2a-815 received or collected by a public transit district, including contact and payment information and customer travel data;
(r) an email address provided by a military or

overseas voter under Section 20A-16-501;
(s) a completed military-overseas ballot that is electronically transmitted under Title 20A, Chapter 16, Uniform Military and Overseas Voters Act;
(t) records received by or generated by or for the Political Subdivisions Ethics Review Commission established in Section 11-49-201, except for:
(i) the commission's summary data report that is required in Section 11-49-202; and
(ii) any other document that is classified as public in accordance with Title 11, Chapter 49, Political Subdivisions Ethics Review Commission;
(u) a record described in Subsection 53A-11a-203(3) that verifies that a parent was notified of an incident or threat; and
(v) a criminal background check or credit history report conducted in accordance with Section 63A-3-201.

(2) The following records are private if properly classified by a governmental entity:
(a) records concerning a current or former employee of, or applicant for employment with a governmental entity, including performance evaluations and personal status information such as race, religion, or disabilities, but not including records that are public under Subsection 63G-2-301(2)(b) or 63G-2-301(3)(o) or private under Subsection (1)(b);
(b) records describing an individual's finances, except that the following are public:
(i) records described in Subsection 63G-2-301(2);
(ii) information provided to the governmental entity for the purpose of complying with a financial assurance requirement; or
(iii) records that must be disclosed in accordance with another statute;
(c) records of independent state agencies if the disclosure of those records would conflict with the fiduciary obligations of the agency;
(d) other records containing data on individuals the disclosure of which constitutes a clearly unwarranted invasion of personal privacy;
(e) records provided by the United States or by a government entity outside the state that are given with the requirement that the records be managed as private records, if the providing entity states in writing that the record would not be subject to public disclosure if retained by it;
(f) any portion of a record in the custody of the Division of Aging and Adult Services, created in Section 62A-3-102, that may disclose, or lead to the discovery of, the identity of a person who made a report of alleged abuse, neglect, or exploitation of a vulnerable adult; and
(g) audio and video recordings created by a body-worn camera, as defined in Section 77-7a-103, that record sound or images inside a home or residence except for recordings that:
(i) depict the commission of an alleged crime;
(ii) record any encounter between a law enforcement officer and a person that results in death or bodily injury, or includes an instance when an officer fires a weapon;
(iii) record any encounter that is the subject of a complaint or a legal proceeding against a law enforcement officer or law enforcement agency;
(iv) contain an officer involved critical incident as defined in Section 76-2-408(1)(d); or
(v) have been requested for reclassification as a public record by a subject or authorized agent of a subject featured in the recording.

(3)
(a) As used in this Subsection (3), "medical records" means medical reports, records, statements, history, diagnosis, condition, treatment, and evaluation.
(b) Medical records in the possession of the University of Utah Hospital, its clinics, doctors, or affiliated entities are not private records or controlled records under Section 63G-2-304 when the records are sought:
(i) in connection with any legal or

administrative proceeding in which the patient's physical, mental, or emotional condition is an element of any claim or defense; or

(ii) after a patient's death, in any legal or administrative proceeding in which any party relies upon the condition as an element of the claim or defense.

(c) Medical records are subject to production in a legal or administrative proceeding according to state or federal statutes or rules of procedure and evidence as if the medical records were in the possession of a nongovernmental medical care provider.

Amended by Chapter 410, 2016 General Session

63G-2-303 Private information concerning certain government employees.

(1) As used in this section:

(a) "At-risk government employee" means a current or former:

(i) peace officer as specified in Section 53-13-102;

(ii) supreme court justice;

(iii) judge of an appellate, district, or juvenile court, or a court commissioner;

(iv) justice court judge;

(v) judge authorized by Title 39, Chapter 6, Utah Code of Military Justice;

(vi) federal judge;

(vii) federal magistrate judge;

(viii) judge authorized by Armed Forces, Title 10, United States Code;

(ix) United States Attorney;

(x) Assistant United States Attorney;

(xi) a prosecutor appointed pursuant to Armed Forces, Title 10, United States Code;

(xii) a law enforcement official as defined in Section 53-5-711; or

(xiii) a prosecutor authorized by Title 39, Chapter 6, Utah Code of Military Justice.

(b) "Family member" means the spouse, child, sibling, parent, or grandparent of an at-risk government employee who is living with the employee.

(2)

(a) Pursuant to Subsection 63G-2-302(1)(h), an at-risk government employee may file a written application that:

(i) gives notice of the employee's status to each agency of a government entity holding a record or a part of a record that would disclose the employee's or the employee's family member's home address, home telephone number, Social Security number, insurance coverage, marital status, or payroll deductions; and

(ii) requests that the government agency classify those records or parts of records private.

(b) An at-risk government employee desiring to file an application under this section may request assistance from the government agency to identify the individual records containing the private information specified in Subsection (2)(a)(i).

(c) Each government agency shall develop a form that:

(i) requires the at-risk government employee to provide evidence of qualifying employment;

(ii) requires the at-risk government employee to designate each specific record or part of a record containing the employee's home address, home telephone number, Social Security number, insurance coverage, marital status, or payroll deductions that the applicant desires to be classified as private; and

(iii) affirmatively requests that the government entity holding those records classify them as private.

(3) A county recorder, county treasurer, county auditor, or a county tax assessor may fully satisfy the requirements of this section by:

(a) providing a method for the assessment roll and index and the tax roll and index that will

block public access to the home address, home telephone number, situs address, and Social Security number; and

(b) providing the at-risk government employee requesting the classification with a disclaimer informing the employee that the employee may not receive official announcements affecting the employee's property, including notices about proposed annexations, incorporations, or zoning modifications.

(4) A government agency holding records of an at-risk government employee classified as private under this section may release the record or part of the record if:

(a) the employee or former employee gives written consent;

(b) a court orders release of the records; or

(c) the government agency receives a certified death certificate for the employee or former employee.

(5)

(a) If the government agency holding the private record receives a subpoena for the records, the government agency shall attempt to notify the at-risk government employee or former employee by mailing a copy of the subpoena to the employee's last-known mailing address together with a request that the employee either:

(i) authorize release of the record; or

(ii) within 10 days of the date that the copy and request are mailed, deliver to the government agency holding the private record a copy of a motion to quash filed with the court who issued the subpoena.

(b) The government agency shall comply with the subpoena if the government agency has:

(i) received permission from the at-risk government employee or former employee to comply with the subpoena;

(ii) not received a copy of a motion to quash within 10 days of the date that the copy of the subpoena was mailed; or

(iii) received a court order requiring release of the records.

Amended by Chapter 426, 2013 General Session

63G-2-304 Controlled records.

A record is controlled if:

(1) the record contains medical, psychiatric, or psychological data about an individual;

(2) the governmental entity reasonably believes that:

(a) releasing the information in the record to the subject of the record would be detrimental to the subject's mental health or to the safety of any individual; or

(b) releasing the information would constitute a violation of normal professional practice and medical ethics; and

(3) the governmental entity has properly classified the record.

Renumbered and Amended by Chapter 382, 2008 General Session

63G-2-305 Protected records.

The following records are protected if properly classified by a governmental entity:

(1) trade secrets as defined in Section 13-24-2 if the person submitting the trade secret has provided the governmental entity with the information specified in Section 63G-2-309;

(2) commercial information or nonindividual financial information obtained from a person if:

(a) disclosure of the information could reasonably be expected to result in unfair competitive injury to the person submitting the information or would impair the ability of the governmental entity to obtain necessary information in the future;

(b) the person submitting the information has a greater interest in prohibiting access than the public in obtaining access; and

(c) the person submitting the information has provided the governmental entity with the

information specified in Section 63G-2-309;
(3) commercial or financial information acquired or prepared by a governmental entity to the extent that disclosure would lead to financial speculations in currencies, securities, or commodities that will interfere with a planned transaction by the governmental entity or cause substantial financial injury to the governmental entity or state economy;
(4) records, the disclosure of which could cause commercial injury to, or confer a competitive advantage upon a potential or actual competitor of, a commercial project entity as defined in Subsection 11-13-103(4);
(5) test questions and answers to be used in future license, certification, registration, employment, or academic examinations;
(6) records, the disclosure of which would impair governmental procurement proceedings or give an unfair advantage to any person proposing to enter into a contract or agreement with a governmental entity, except, subject to Subsections (1) and (2), that this Subsection (6) does not restrict the right of a person to have access to, after the contract or grant has been awarded and signed by all parties, a bid, proposal, application, or other information submitted to or by a governmental entity in response to:
(a) an invitation for bids;
(b) a request for proposals;
(c) a request for quotes;
(d) a grant; or
(e) other similar document;
(7) information submitted to or by a governmental entity in response to a request for information, except, subject to Subsections (1) and (2), that this Subsection (7) does not restrict the right of a person to have access to the information, after:
(a) a contract directly relating to the subject of the request for information has been awarded and signed by all parties; or
(b)
(i) a final determination is made not to enter into a contract that relates to the subject of the request for information; and
(ii) at least two years have passed after the day on which the request for information is issued;
(8) records that would identify real property or the appraisal or estimated value of real or personal property, including intellectual property, under consideration for public acquisition before any rights to the property are acquired unless:
(a) public interest in obtaining access to the information is greater than or equal to the governmental entity's need to acquire the property on the best terms possible;
(b) the information has already been disclosed to persons not employed by or under a duty of confidentiality to the entity;
(c) in the case of records that would identify property, potential sellers of the described property have already learned of the governmental entity's plans to acquire the property;
(d) in the case of records that would identify the appraisal or estimated value of property, the potential sellers have already learned of the governmental entity's estimated value of the property; or
(e) the property under consideration for public acquisition is a single family residence and the governmental entity seeking to acquire the property has initiated negotiations to acquire the property as required under Section 78B-6-505;
(9) records prepared in contemplation of sale, exchange, lease, rental, or other compensated transaction of real or personal property including intellectual property, which, if disclosed prior to completion of the transaction, would reveal the appraisal or estimated value of the subject property, unless:
(a) the public interest in access is greater than or equal to the interests in restricting access, including the governmental entity's interest in maximizing the financial benefit of the transaction; or

(b) when prepared by or on behalf of a governmental entity, appraisals or estimates of the value of the subject property have already been disclosed to persons not employed by or under a duty of confidentiality to the entity;

(10) records created or maintained for civil, criminal, or administrative enforcement purposes or audit purposes, or for discipline, licensing, certification, or registration purposes, if release of the records:

(a) reasonably could be expected to interfere with investigations undertaken for enforcement, discipline, licensing, certification, or registration purposes;

(b) reasonably could be expected to interfere with audits, disciplinary, or enforcement proceedings;

(c) would create a danger of depriving a person of a right to a fair trial or impartial hearing;

(d) reasonably could be expected to disclose the identity of a source who is not generally known outside of government and, in the case of a record compiled in the course of an investigation, disclose information furnished by a source not generally known outside of government if disclosure would compromise the source; or

(e) reasonably could be expected to disclose investigative or audit techniques, procedures, policies, or orders not generally known outside of government if disclosure would interfere with enforcement or audit efforts;

(11) records the disclosure of which would jeopardize the life or safety of an individual;

(12) records the disclosure of which would jeopardize the security of governmental property, governmental programs, or governmental recordkeeping systems from damage, theft, or other appropriation or use contrary to law or public policy;

(13) records that, if disclosed, would jeopardize the security or safety of a correctional facility, or records relating to incarceration, treatment, probation, or parole, that would interfere with the control and supervision of an offender's incarceration, treatment, probation, or parole;

(14) records that, if disclosed, would reveal recommendations made to the Board of Pardons and Parole by an employee of or contractor for the Department of Corrections, the Board of Pardons and Parole, or the Department of Human Services that are based on the employee's or contractor's supervision, diagnosis, or treatment of any person within the board's jurisdiction;

(15) records and audit workpapers that identify audit, collection, and operational procedures and methods used by the State Tax Commission, if disclosure would interfere with audits or collections;

(16) records of a governmental audit agency relating to an ongoing or planned audit until the final audit is released;

(17) records that are subject to the attorney client privilege;

(18) records prepared for or by an attorney, consultant, surety, indemnitor, insurer, employee, or agent of a governmental entity for, or in anticipation of, litigation or a judicial, quasi-judicial, or administrative proceeding;

(19)

(a)

(i) personal files of a state legislator, including personal correspondence to or from a member of the Legislature; and

(ii) notwithstanding Subsection (19)(a)(i), correspondence that gives notice of legislative action or policy may not be classified as protected under this section; and

(b)

(i) an internal communication that is part of the deliberative process in connection with the preparation of legislation between:

(A) members of a legislative body;

(B) a member of a legislative body and a member of the legislative body's staff; or

(C) members of a legislative body's staff; and

(ii) notwithstanding Subsection (19)(b)(i), a communication that gives notice of legislative action or policy may not be classified as

protected under this section;

(20)

(a) records in the custody or control of the Office of Legislative Research and General Counsel, that, if disclosed, would reveal a particular legislator's contemplated legislation or contemplated course of action before the legislator has elected to support the legislation or course of action, or made the legislation or course of action public; and

(b) notwithstanding Subsection (20)(a), the form to request legislation submitted to the Office of Legislative Research and General Counsel is a public document unless a legislator asks that the records requesting the legislation be maintained as protected records until such time as the legislator elects to make the legislation or course of action public;

(21) research requests from legislators to the Office of Legislative Research and General Counsel or the Office of the Legislative Fiscal Analyst and research findings prepared in response to these requests;

(22) drafts, unless otherwise classified as public;

(23) records concerning a governmental entity's strategy about:

(a) collective bargaining; or

(b) imminent or pending litigation;

(24) records of investigations of loss occurrences and analyses of loss occurrences that may be covered by the Risk Management Fund, the Employers' Reinsurance Fund, the Uninsured Employers' Fund, or similar divisions in other governmental entities;

(25) records, other than personnel evaluations, that contain a personal recommendation concerning an individual if disclosure would constitute a clearly unwarranted invasion of personal privacy, or disclosure is not in the public interest;

(26) records that reveal the location of historic, prehistoric, paleontological, or biological resources that if known would jeopardize the security of those resources or of valuable historic, scientific, educational, or cultural information;

(27) records of independent state agencies if the disclosure of the records would conflict with the fiduciary obligations of the agency;

(28) records of an institution within the state system of higher education defined in Section 53B-1-102 regarding tenure evaluations, appointments, applications for admissions, retention decisions, and promotions, which could be properly discussed in a meeting closed in accordance with Title 52, Chapter 4, Open and Public Meetings Act, provided that records of the final decisions about tenure, appointments, retention, promotions, or those students admitted, may not be classified as protected under this section;

(29) records of the governor's office, including budget recommendations, legislative proposals, and policy statements, that if disclosed would reveal the governor's contemplated policies or contemplated courses of action before the governor has implemented or rejected those policies or courses of action or made them public;

(30) records of the Office of the Legislative Fiscal Analyst relating to budget analysis, revenue estimates, and fiscal notes of proposed legislation before issuance of the final recommendations in these areas;

(31) records provided by the United States or by a government entity outside the state that are given to the governmental entity with a requirement that they be managed as protected records if the providing entity certifies that the record would not be subject to public disclosure if retained by it;

(32) transcripts, minutes, or reports of the closed portion of a meeting of a public body except as provided in Section 52-4-206;

(33) records that would reveal the contents of settlement negotiations but not including final settlements or empirical data to the extent that they are not otherwise exempt from disclosure;

(34) memoranda prepared by staff and used in the decision-making process by an administrative law judge, a member of the Board of Pardons and Parole, or a member of any other body charged by

law with performing a quasi-judicial function;
(35) records that would reveal negotiations regarding assistance or incentives offered by or requested from a governmental entity for the purpose of encouraging a person to expand or locate a business in Utah, but only if disclosure would result in actual economic harm to the person or place the governmental entity at a competitive disadvantage, but this section may not be used to restrict access to a record evidencing a final contract;
(36) materials to which access must be limited for purposes of securing or maintaining the governmental entity's proprietary protection of intellectual property rights including patents, copyrights, and trade secrets;
(37) the name of a donor or a prospective donor to a governmental entity, including an institution within the state system of higher education defined in Section 53B-1-102, and other information concerning the donation that could reasonably be expected to reveal the identity of the donor, provided that:
(a) the donor requests anonymity in writing;
(b) any terms, conditions, restrictions, or privileges relating to the donation may not be classified protected by the governmental entity under this Subsection (37); and
(c) except for an institution within the state system of higher education defined in Section 53B-1-102, the governmental unit to which the donation is made is primarily engaged in educational, charitable, or artistic endeavors, and has no regulatory or legislative authority over the donor, a member of the donor's immediate family, or any entity owned or controlled by the donor or the donor's immediate family;
(38) accident reports, except as provided in Sections 41-6a-404, 41-12a-202, and 73-18-13;
(39) a notification of workers' compensation insurance coverage described in Section 34A-2-205;
(40)
(a) the following records of an institution within the state system of higher education defined in Section 53B-1-102, which have been developed, discovered, disclosed to, or received by or on behalf of faculty, staff, employees, or students of the institution:
(i) unpublished lecture notes;
(ii) unpublished notes, data, and information:
(A) relating to research; and
(B) of:
(I) the institution within the state system of higher education defined in Section 53B-1-102; or
(II) a sponsor of sponsored research;
(iii) unpublished manuscripts;
(iv) creative works in process;
(v) scholarly correspondence; and
(vi) confidential information contained in research proposals;
(b) Subsection (40)(a) may not be construed to prohibit disclosure of public information required pursuant to Subsection 53B-16-302(2)(a) or (b); and
(c) Subsection (40)(a) may not be construed to affect the ownership of a record;
(41)
(a) records in the custody or control of the Office of Legislative Auditor General that would reveal the name of a particular legislator who requests a legislative audit prior to the date that audit is completed and made public; and
(b) notwithstanding Subsection (41)(a), a request for a legislative audit submitted to the Office of the Legislative Auditor General is a public document unless the legislator asks that the records in the custody or control of the Office of Legislative Auditor General that would reveal the name of a particular legislator who requests a legislative audit be maintained as protected records until the audit is completed and made public;
(42) records that provide detail as to the location of an explosive, including a map or other document

that indicates the location of:
(a) a production facility; or
(b) a magazine;
(43) information:
(a) contained in the statewide database of the Division of Aging and Adult Services created by Section 62A-3-311.1; or
(b) received or maintained in relation to the Identity Theft Reporting Information System (IRIS) established under Section 67-5-22;
(44) information contained in the Management Information System and Licensing Information System described in Title 62A, Chapter 4a, Child and Family Services;
(45) information regarding National Guard operations or activities in support of the National Guard's federal mission;
(46) records provided by any pawn or secondhand business to a law enforcement agency or to the central database in compliance with Title 13, Chapter 32a, Pawnshop and Secondhand Merchandise Transaction Information Act;
(47) information regarding food security, risk, and vulnerability assessments performed by the Department of Agriculture and Food;
(48) except to the extent that the record is exempt from this chapter pursuant to Section 63G-2-106, records related to an emergency plan or program, a copy of which is provided to or prepared or maintained by the Division of Emergency Management, and the disclosure of which would jeopardize:
(a) the safety of the general public; or
(b) the security of:
(i) governmental property;
(ii) governmental programs; or
(iii) the property of a private person who provides the Division of Emergency Management information;
(49) records of the Department of Agriculture and Food that provides for the identification, tracing, or control of livestock diseases, including any program established under Title 4, Chapter 24, Utah Livestock Brand and Anti-Theft Act or Title 4, Chapter 31, Control of Animal Disease;
(50) as provided in Section 26-39-501:
(a) information or records held by the Department of Health related to a complaint regarding a child care program or residential child care which the department is unable to substantiate; and
(b) information or records related to a complaint received by the Department of Health from an anonymous complainant regarding a child care program or residential child care;
(51) unless otherwise classified as public under Section 63G-2-301 and except as provided under Section 41-1a-116, an individual's home address, home telephone number, or personal mobile phone number, if:
(a) the individual is required to provide the information in order to comply with a law, ordinance, rule, or order of a government entity; and
(b) the subject of the record has a reasonable expectation that this information will be kept confidential due to:
(i) the nature of the law, ordinance, rule, or order; and
(ii) the individual complying with the law, ordinance, rule, or order;
(52) the name, home address, work addresses, and telephone numbers of an individual that is engaged in, or that provides goods or services for, medical or scientific research that is:
(a) conducted within the state system of higher education, as defined in Section 53B-1-102; and
(b) conducted using animals;
(53) an initial proposal under Title 63N, Chapter 13, Part 2, Government Procurement Private Proposal Program, to the extent not made public by rules made under that chapter;
(54) in accordance with Section 78A-12-203, any record of the Judicial Performance Evaluation Commission concerning an individual commissioner's vote on whether or not to

recommend that the voters retain a judge;
(55) information collected and a report prepared by the Judicial Performance Evaluation Commission concerning a judge, unless Section 20A-7-702 or Title 78A, Chapter 12, Judicial Performance Evaluation Commission Act, requires disclosure of, or makes public, the information or report;
(56) records contained in the Management Information System created in Section 62A-4a-1003;
(57) records provided or received by the Public Lands Policy Coordinating Office in furtherance of any contract or other agreement made in accordance with Section 63J-4-603;
(58) information requested by and provided to the 911 Division under Section 63H-7a-302;
(59) in accordance with Section 73-10-33:
(a) a management plan for a water conveyance facility in the possession of the Division of Water Resources or the Board of Water Resources; or
(b) an outline of an emergency response plan in possession of the state or a county or municipality;
(60) the following records in the custody or control of the Office of Inspector General of Medicaid Services, created in Section 63A-13-201:
(a) records that would disclose information relating to allegations of personal misconduct, gross mismanagement, or illegal activity of a person if the information or allegation cannot be corroborated by the Office of Inspector General of Medicaid Services through other documents or evidence, and the records relating to the allegation are not relied upon by the Office of Inspector General of Medicaid Services in preparing a final investigation report or final audit report;
(b) records and audit workpapers to the extent they would disclose the identity of a person who, during the course of an investigation or audit, communicated the existence of any Medicaid fraud, waste, or abuse, or a violation or suspected violation of a law, rule, or regulation adopted under the laws of this state, a political subdivision of the state, or any recognized entity of the United States, if the information was disclosed on the condition that the identity of the person be protected;
(c) before the time that an investigation or audit is completed and the final investigation or final audit report is released, records or drafts circulated to a person who is not an employee or head of a governmental entity for the person's response or information;
(d) records that would disclose an outline or part of any investigation, audit survey plan, or audit program; or
(e) requests for an investigation or audit, if disclosure would risk circumvention of an investigation or audit;
(61) records that reveal methods used by the Office of Inspector General of Medicaid Services, the fraud unit, or the Department of Health, to discover Medicaid fraud, waste, or abuse;
(62) information provided to the Department of Health or the Division of Occupational and Professional Licensing under Subsection 58-68-304(3) or (4);
(63) a record described in Section 63G-12-210;
(64) captured plate data that is obtained through an automatic license plate reader system used by a governmental entity as authorized in Section 41-6a-2003; and
(65) any record in the custody of the Utah Office for Victims of Crime relating to a victim, including:
(a) a victim's application or request for benefits;
(b) a victim's receipt or denial of benefits; and
(c) any administrative notes or records made or created for the purpose of, or used to, evaluate or communicate a victim's eligibility for or denial of benefits from the Crime Victim Reparations Fund.

Amended by Chapter 147, 2015 General Session
Amended by Chapter 283, 2015 General Session
Amended by Chapter 411, 2015 General Session

63G-2-306 Procedure to determine classification.
(1) If more than one provision of this chapter could govern the classification of a record, the governmental entity shall classify the record by considering the nature of the interests intended to be protected and the specificity of the competing provisions.
(2) Nothing in Subsection 63G-2-302(2), Section 63G-2-304, or 63G-2-305 requires a governmental entity to classify a record as private, controlled, or protected.

Renumbered and Amended by Chapter 382, 2008 General Session

63G-2-307 Duty to evaluate records and make designations and classifications.
(1) A governmental entity shall:
(a) evaluate all record series that it uses or creates;
(b) designate those record series as provided by this chapter and Title 63A, Chapter 12, Public Records Management Act; and
(c) report the designations of its record series to the state archives.
(2) A governmental entity may classify a particular record, record series, or information within a record at any time, but is not required to classify a particular record, record series, or information until access to the record is requested.
(3) A governmental entity may redesignate a record series or reclassify a record or record series, or information within a record at any time.

Renumbered and Amended by Chapter 382, 2008 General Session

63G-2-308 Segregation of records.
Notwithstanding any other provision in this chapter, if a governmental entity receives a request for access to a record that contains both information that the requester is entitled to inspect and information that the requester is not entitled to inspect under this chapter, and, if the information the requester is entitled to inspect is intelligible, the governmental entity:
(1) shall allow access to information in the record that the requester is entitled to inspect under this chapter; and
(2) may deny access to information in the record if the information is exempt from disclosure to the requester, issuing a notice of denial as provided in Section 63G-2-205.

Renumbered and Amended by Chapter 382, 2008 General Session

63G-2-309 Confidentiality claims.
(1)
(a)
(i) Any person who provides to a governmental entity a record that the person believes should be protected under Subsection 63G-2-305(1) or (2) or both Subsections 63G-2-305(1) and (2) shall provide with the record:
(A) a written claim of business confidentiality; and
(B) a concise statement of reasons supporting the claim of business confidentiality.
(ii) Any of the following who provides to an institution within the state system of higher education defined in Section 53B-1-102 a record that the person or governmental entity believes should be protected under Subsection 63G-2-305(40)(a)(ii) or (vi) or both Subsections 63G-2-305(40)(a)(ii) and (vi) shall provide the institution within the state system of higher education a written claim of business confidentiality in accordance with Section 53B-16-304:
(A) a person;
(B) a federal governmental entity;
(C) a state governmental entity; or

(D) a local governmental entity.

(b) A person or governmental entity who complies with this Subsection (1) shall be notified by the governmental entity to whom the request for a record is made if:

(i) a record claimed to be protected under one of the following is classified public:

(A) Subsection 63G-2-305(1);

(B) Subsection 63G-2-305(2);

(C) Subsection 63G-2-305(40)(a)(ii);

(D) Subsection 63G-2-305(40)(a)(vi); or

(E) a combination of the provisions described in Subsections (1)(b)(i)(A) through (D); or

(ii) the governmental entity to whom the request for a record is made determines that the record claimed to be protected under a provision listed in Subsection (1)(b)(i) should be released after balancing interests under Subsection 63G-2-201(5)(b) or 63G-2-401(6).

(2) Except as provided by court order, the governmental entity to whom the request for a record is made may not disclose a record claimed to be protected under a provision listed in Subsection (1)(b)(i) but which the governmental entity or records committee determines should be disclosed until the period in which to bring an appeal expires or the end of the appeals process, including judicial appeal. This Subsection (2) does not apply where the claimant, after notice, has waived the claim by not appealing or intervening before the records committee.

(3) Disclosure or acquisition of information under this chapter does not constitute misappropriation under Subsection 13-24-2(2).

Amended by Chapter 445, 2013 General Session

63G-2-310 Records made public after 75 years.

(1) The classification of a record is not permanent and a record that was not classified public under this act shall become a public record when the justification for the original or any subsequent restrictive classification no longer exists. A record shall be presumed to be public 75 years after its creation, except that a record that contains information about an individual 21 years old or younger at the time of the record's creation shall be presumed to be public 100 years after its creation.

(2) Subsection (1) does not apply to records of unclaimed property held by the state treasurer in accordance with Title 67, Chapter 4a, Unclaimed Property Act.

Renumbered and Amended by Chapter 382, 2008 General Session

Part 4
Appeals

63G-2-400.5 Definitions.

As used in this part:

(1) "Access denial" means a governmental entity's denial, under Subsection 63G-2-204(8) or Section 63G-2-205, in whole or in part, of a record request.

(2) "Appellate affirmation" means a decision of a chief administrative officer, local appeals board, or records committee affirming an access denial.

(3) "Interested party" means a person, other than a requester, who is aggrieved by an access denial or an appellate affirmation, whether or not the person participated in proceedings leading to the access denial or appellate affirmation.

(4) "Local appeals board" means an appeals board established by a political subdivision under Subsection 63G-2-701(5)(c).

(5) "Record request" means a request for a record under Section 63G-2-204.

(6) "Records committee appellant" means:

(a) a political subdivision that seeks to appeal a decision of a local appeals board to the records committee; or

(b) a requester or interested party who seeks to appeal to the records committee a decision affirming an access denial.

(7) “Requester” means a person who submits a record request to a governmental entity.

Enacted by Chapter 335, 2015 General Session

63G-2-401 Appeal to chief administrative officer -- Notice of the decision of the appeal.

(1)
(a) A requester or interested party may appeal an access denial to the chief administrative officer of the governmental entity by filing a notice of appeal with the chief administrative officer within 30 days after:
(i) the governmental entity sends a notice of denial under Section 63G-2-205, if the governmental entity denies a record request under Subsection 63G-2-205(1); or
(ii) the record request is considered denied under Subsection 63G-2-204(8), if that subsection applies.
(b) If a governmental entity claims extraordinary circumstances and specifies the date when the records will be available under Subsection 63G-2-204(3), and, if the requester believes the extraordinary circumstances do not exist or that the date specified is unreasonable, the requester may appeal the governmental entity’s claim of extraordinary circumstances or date for compliance to the chief administrative officer by filing a notice of appeal with the chief administrative officer within 30 days after notification of a claim of extraordinary circumstances by the governmental entity, despite the lack of a “determination” or its equivalent under Subsection 63G-2-204(8).

(2) A notice of appeal shall contain:
(a) the name, mailing address, and daytime telephone number of the requester or interested party; and
(b) the relief sought.

(3) The requester or interested party may file a short statement of facts, reasons, and legal authority in support of the appeal.

(4)
(a) If the appeal involves a record that is the subject of a business confidentiality claim under Section 63G-2-309, the chief administrative officer shall:
(i) send notice of the appeal to the business confidentiality claimant within three business days after receiving notice, except that if notice under this section must be given to more than 35 persons, it shall be given as soon as reasonably possible; and
(ii) send notice of the business confidentiality claim and the schedule for the chief administrative officer’s determination to the requester or interested party within three business days after receiving notice of the appeal.
(b) The business confidentiality claimant shall have seven business days after notice is sent by the administrative officer to submit further support for the claim of business confidentiality.

(5)
(a) The chief administrative officer shall make a decision on the appeal within:
(i) five business days after the chief administrative officer’s receipt of the notice of appeal; or
(ii) 12 business days after the governmental entity sends the notice of appeal to a person who submitted a claim of business confidentiality.
(b)
(i) If the chief administrative officer fails to make a decision on an appeal of an access denial within the time specified in Subsection (5)(a), the failure is the equivalent of a decision affirming the access denial.
(ii) If the chief administrative officer fails to make a decision on an appeal under Subsection (1)(b) within the time specified in Subsection (5)(a), the failure is the equivalent of a decision affirming the claim of extraordinary circumstances or the

reasonableness of the date specified when the records will be available.

(c) The provisions of this section notwithstanding, the parties participating in the proceeding may, by agreement, extend the time periods specified in this section.

(6) Except as provided in Section 63G-2-406, the chief administrative officer may, upon consideration and weighing of the various interests and public policies pertinent to the classification and disclosure or nondisclosure, order the disclosure of information properly classified as private under Subsection 63G-2-302(2) or protected under Section 63G-2-305 if the interests favoring access are greater than or equal to the interests favoring restriction of access.

(7)

(a) The governmental entity shall send written notice of the chief administrative officer's decision to all participants.

(b) If the chief administrative officer's decision is to affirm the access denial in whole or in part, the notice under Subsection (7)(a) shall include:

(i) a statement that the requester or interested party has the right to appeal the decision, as provided in Section 63G-2-402, to:

(A) the records committee or district court; or

(B) the local appeals board, if the governmental entity is a political subdivision and the governmental entity has established a local appeals board;

(ii) the time limits for filing an appeal; and

(iii) the name and business address of:

(A) the executive secretary of the records committee; and

(B) the individual designated as the contact individual for the appeals board, if the governmental entity is a political subdivision that has established an appeals board under Subsection 63G-2-701(5)(c).

(8) A person aggrieved by a governmental entity's classification or designation determination under this chapter, but who is not requesting access to the records, may appeal that determination using the procedures provided in this section. If a nonrequester is the only appellant, the procedures provided in this section shall apply, except that the decision on the appeal shall be made within 30 days after receiving the notice of appeal.

(9) The duties of the chief administrative officer under this section may be delegated.

Amended by Chapter 335, 2015 General Session

63G-2-402 Appealing a decision of a chief administrative officer.

(1) If the decision of the chief administrative officer of a governmental entity under Section 63G-2-401 is to affirm the denial of a record request, the requester may:

(a)

(i) appeal the decision to the records committee, as provided in Section 63G-2-403; or

(ii) petition for judicial review of the decision in district court, as provided in Section 63G-2-404; or

(b) appeal the decision to the local appeals board if:

(i) the decision is of a chief administrative officer of a governmental entity that is a political subdivision; and

(ii) the political subdivision has established a local appeals board.

(2) A requester who appeals a chief administrative officer's decision to the records committee or a local appeals board does not lose or waive the right to seek judicial review of the decision of the records committee or local appeals board.

(3) As provided in Section 63G-2-403, an interested party may appeal to the records committee a chief administrative officer's decision under Section 63G-2-401 affirming an access denial.

Amended by Chapter 335, 2015 General Session

63G-2-403 Appeals to the records committee.

(1)

(a) A records committee appellant appeals to the records committee by filing a notice of appeal with the executive secretary of the records committee no later than 30 days after the date of issuance of the decision being appealed.

(b) Notwithstanding Subsection (1)(a), a requester may file a notice of appeal with the executive secretary of the records committee no later than 45 days after the day on which the record request is made if:

(i) the circumstances described in Subsection 63G-2-401(1)(b) occur; and

(ii) the chief administrative officer fails to make a decision under Section 63G-2-401.

(2) The notice of appeal shall:

(a) contain the name, mailing address, and daytime telephone number of the records committee appellant;

(b) be accompanied by a copy of the decision being appealed; and

(c) state the relief sought.

(3) The records committee appellant:

(a) shall, on the day on which the notice of appeal is filed with the records committee, serve a copy of the notice of appeal on:

(i) the governmental entity whose access denial is the subject of the appeal, if the records committee appellant is a requester or interested party; or

(ii) the requester or interested party who is a party to the local appeals board proceeding that resulted in the decision that the political subdivision is appealing to the records committee, if the records committee appellant is a political subdivision; and

(b) may file a short statement of facts, reasons, and legal authority in support of the appeal.

(4)

(a) Except as provided in Subsections (4)(b) and (c), no later than seven business days after receiving a notice of appeal, the executive secretary of the records committee shall:

(i) schedule a hearing for the records committee to discuss the appeal at the next regularly scheduled committee meeting falling at least 16 days after the date the notice of appeal is filed but no longer than 64 calendar days after the date the notice of appeal was filed except that the records committee may schedule an expedited hearing upon application of the records committee appellant and good cause shown;

(ii) send a copy of the notice of hearing to the records committee appellant; and

(iii) send a copy of the notice of appeal, supporting statement, and a notice of hearing to:

(A) each member of the records committee;

(B) the records officer and the chief administrative officer of the governmental entity whose access denial is the subject of the appeal, if the records committee appellant is a requester or interested party;

(C) any person who made a business confidentiality claim under Section 63G-2-309 for a record that is the subject of the appeal; and

(D) all persons who participated in the proceedings before the governmental entity's chief administrative officer, if the appeal is of the chief administrative officer's decision affirming an access denial.

(b)

(i) The executive secretary of the records committee may decline to schedule a hearing if the record series that is the subject of the appeal has been found by the committee in a previous hearing involving the same governmental entity to be appropriately classified as private, controlled, or protected.

(ii)

(A) If the executive secretary of the records committee declines to schedule a hearing, the executive secretary of the records

committee shall send a notice to the records committee appellant indicating that the request for hearing has been denied and the reason for the denial.

(B) The committee shall make rules to implement this section as provided by Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(c) The executive secretary of the records committee may schedule a hearing on an appeal to the records committee at a regularly scheduled records committee meeting that is later than the period described in Subsection (4)(a)(i) if that records committee meeting is the first regularly scheduled records committee meeting at which there are fewer than 10 appeals scheduled to be heard.

(5)

(a) No later than five business days before the hearing, a governmental entity shall submit to the executive secretary of the records committee a written statement of facts, reasons, and legal authority in support of the governmental entity's position.

(b) The governmental entity shall send a copy of the written statement by first class mail, postage prepaid, to the requester or interested party involved in the appeal. The executive secretary shall forward a copy of the written statement to each member of the records committee.

(6)

(a) No later than 10 business days after the notice of appeal is sent by the executive secretary, a person whose legal interests may be substantially affected by the proceeding may file a request for intervention before the records committee.

(b) Any written statement of facts, reasons, and legal authority in support of the intervener's position shall be filed with the request for intervention.

(c) The person seeking intervention shall provide copies of the statement described in Subsection (6)(b) to all parties to the proceedings before the records committee.

(7) The records committee shall hold a hearing within the period of time described in Subsection (4).

(8) At the hearing, the records committee shall allow the parties to testify, present evidence, and comment on the issues. The records committee may allow other interested persons to comment on the issues.

(9)

(a)

(i) The records committee:

(A) may review the disputed records; and

(B) shall review the disputed records, if the committee is weighing the various interests under Subsection (11).

(ii) A review of the disputed records under Subsection (9)(a)(i) shall be in camera.

(b) Members of the records committee may not disclose any information or record reviewed by the committee in camera unless the disclosure is otherwise authorized by this chapter.

(10)

(a) Discovery is prohibited, but the records committee may issue subpoenas or other orders to compel production of necessary evidence.

(b) When the subject of a records committee subpoena disobeys or fails to comply with the subpoena, the records committee may file a motion for an order to compel obedience to the subpoena with the district court.

(c)

(i) The records committee's review shall be de novo, if the appeal is an appeal from a decision of a chief administrative officer:

(A) issued under Section 63G-2-401; or

(B) issued by a chief administrative officer of a political subdivision that has not established a local appeals board.

(ii) For an appeal from a decision of a local appeals board, the records committee shall review and consider the decision of the local

appeals board.

(11)

(a) No later than seven business days after the hearing, the records committee shall issue a signed order:

(i) granting the relief sought, in whole or in part; or

(ii) upholding the governmental entity's access denial, in whole or in part.

(b) Except as provided in Section 63G-2-406, the records committee may, upon consideration and weighing of the various interests and public policies pertinent to the classification and disclosure or nondisclosure, order the disclosure of information properly classified as private, controlled, or protected if the public interest favoring access is greater than or equal to the interest favoring restriction of access.

(c) In making a determination under Subsection (11)(b), the records committee shall consider and, where appropriate, limit the requester's or interested party's use and further disclosure of the record in order to protect:

(i) privacy interests in the case of a private or controlled record;

(ii) business confidentiality interests in the case of a record protected under Subsection 63G-2-305(1), (2), (40)(a)(ii), or (40)(a)(vi); and

(iii) privacy interests or the public interest in the case of other protected records.

(12) The order of the records committee shall include:

(a) a statement of reasons for the decision, including citations to this chapter, court rule or order, another state statute, federal statute, or federal regulation that governs disclosure of the record, if the citations do not disclose private, controlled, or protected information;

(b) a description of the record or portions of the record to which access was ordered or denied, if the description does not disclose private, controlled, or protected information or information exempt from disclosure under Subsection 63G-2-201(3)(b);

(c) a statement that any party to the proceeding before the records committee may appeal the records committee's decision to district court; and

(d) a brief summary of the appeals process, the time limits for filing an appeal, and a notice that in order to protect its rights on appeal, the party may wish to seek advice from an attorney.

(13) If the records committee fails to issue a decision within 73 calendar days of the filing of the notice of appeal, that failure is the equivalent of an order denying the appeal. A records committee appellant shall notify the records committee in writing if the records committee appellant considers the appeal denied.

(14) A party to a proceeding before the records committee may seek judicial review in district court of a records committee order by filing a petition for review of the records committee order as provided in Section 63G-2-404.

(15)

(a) Unless a notice of intent to appeal is filed under Subsection (15)(b), each party to the proceeding shall comply with the order of the records committee.

(b) If a party disagrees with the order of the records committee, that party may file a notice of intent to appeal the order of the records committee.

(c) If the records committee orders the governmental entity to produce a record and no appeal is filed, or if, as a result of the appeal, the governmental entity is required to produce a record, the governmental entity shall:

(i) produce the record; and

(ii) file a notice of compliance with the records committee.

(d)

(i) If the governmental entity that is ordered to produce a record fails to file a notice of compliance or a notice of intent to appeal, the

records committee may do either or both of the following:
(A) impose a civil penalty of up to $500 for each day of continuing noncompliance; or
(B) send written notice of the governmental entity's noncompliance to:
(I) the governor for executive branch entities;
(II) the Legislative Management Committee for legislative branch entities; and
(III) the Judicial Council for judicial branch agencies entities.
(ii) In imposing a civil penalty, the records committee shall consider the gravity and circumstances of the violation, including whether the failure to comply was due to neglect or was willful or intentional.

Amended by Chapter 335, 2015 General Session

63G-2-404 Judicial review.
(1)
(a) A petition for judicial review of an order or decision, as allowed under this part or in Subsection 63G-2-701(6)(a)(ii), shall be filed no later than 30 days after the date of the order or decision.
(b) The records committee is a necessary party to a petition for judicial review of a records committee order.
(c) The executive secretary of the records committee shall be served with notice of a petition for judicial review of a records committee order, in accordance with the Utah Rules of Civil Procedure.
(2) A petition for judicial review is a complaint governed by the Utah Rules of Civil Procedure and shall contain:
(a) the petitioner's name and mailing address;
(b) a copy of the records committee order from which the appeal is taken, if the petitioner is seeking judicial review of an order of the records committee;
(c) the name and mailing address of the governmental entity that issued the initial determination with a copy of that determination;
(d) a request for relief specifying the type and extent of relief requested; and
(e) a statement of the reasons why the petitioner is entitled to relief.
(3) If the appeal is based on the denial of access to a protected record based on a claim of business confidentiality, the court shall allow the claimant of business confidentiality to provide to the court the reasons for the claim of business confidentiality.
(4) All additional pleadings and proceedings in the district court are governed by the Utah Rules of Civil Procedure.
(5) The district court may review the disputed records. The review shall be in camera.
(6) The court shall:
(a) make its decision de novo, but, for a petition seeking judicial review of a records committee order, allow introduction of evidence presented to the records committee;
(b) determine all questions of fact and law without a jury; and
(c) decide the issue at the earliest practical opportunity.
(7)
(a) Except as provided in Section 63G-2-406, the court may, upon consideration and weighing of the various interests and public policies pertinent to the classification and disclosure or nondisclosure, order the disclosure of information properly classified as private, controlled, or protected if the interest favoring access is greater than or equal to the interest favoring restriction of access.
(b) The court shall consider and, where appropriate, limit the requester's use and further disclosure of the record in order to protect privacy interests in the case of private or controlled records, business confidentiality interests in the case of records protected under

Subsections 63G-2-305(1) and (2), and privacy interests or the public interest in the case of other protected records.

Amended by Chapter 335, 2015 General Session

63G-2-405 Confidential treatment of records for which no exemption applies.

(1) A court may, on appeal or in a declaratory or other action, order the confidential treatment of records for which no exemption from disclosure applies if:

(a) there are compelling interests favoring restriction of access to the record; and

(b) the interests favoring restriction of access clearly are greater than or equal to the interests favoring access.

(2) If a governmental entity requests a court to restrict access to a record under this section, the court shall require the governmental entity to pay the reasonable attorney fees incurred by the lead party in opposing the governmental entity's request, if:

(a) the court finds that no statutory or constitutional exemption from disclosure could reasonably apply to the record in question; and

(b) the court denies confidential treatment under this section.

(3) This section does not apply to records that are specifically required to be public under statutory provisions outside of this chapter or under Section 63G-2-301, except as provided in Subsection (4).

(4)

(a) Access to drafts and empirical data in drafts may be limited under this section, but the court may consider, in its evaluation of interests favoring restriction of access, only those interests that relate to the underlying information, and not to the deliberative nature of the record.

(b) Access to original data in a computer program may be limited under this section, but the court may consider, in its evaluation of interests favoring restriction of access, only those interests that relate to the underlying information, and not to the status of that data as part of a computer program.

Amended by Chapter 377, 2012 General Session

63G-2-406 Evidentiary standards for release of certain enforcement and litigation records.

(1) A record that is classified as protected under Subsection 63G-2-305(10), (17), (18), (23), (24), or (33) may be ordered to be disclosed under the provisions of Subsection 63G-2-401(6), 63G-2-403(11)(b), or 63G-2-404(7)(a) only if the person or party seeking disclosure of the record has established, by a preponderance of the evidence, that the public interest favoring access is equal to or greater than the interest favoring restriction of access.

(2) A record that is classified as protected under Subsection 63G-2-305(11) may be ordered to be disclosed under the provisions of Subsection 63G-2-401(6), 63G-2-403(11)(b), or 63G-2-404(7) only if the person or party seeking disclosure of the record has established, by clear and convincing evidence, that the public interest favoring access is equal to or greater than the interest favoring restriction of access.

Amended by Chapter 445, 2013 General Session

Part 5
State Records Committee

63G-2-501 State Records Committee created -- Membership -- Terms -- Vacancies -- Expenses.

(1) There is created the State Records Committee within the Department of Administrative Services to consist of the following seven individuals:

(a) an individual in the private sector whose profession requires the individual to create or manage records that if created by a governmental entity would be private or controlled;

(b) the director of the Division of State History or the director's designee;
(c) the governor or the governor's designee;
(d) two citizen members;
(e) one person representing political subdivisions, as recommended by the Utah League of Cities and Towns; and
(f) one individual representing the news media.
(2) The members specified in Subsections (1)(a), (d), (e), and (f) shall be appointed by the governor with the consent of the Senate.
(3)
(a) Except as required by Subsection (3)(b), as terms of current committee members expire, the governor shall appoint each new member or reappointed member to a four-year term.
(b) Notwithstanding the requirements of Subsection (3)(a), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of committee members are staggered so that approximately half of the committee is appointed every two years.
(c) Each appointed member is eligible for reappointment for one additional term.
(4) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.
(5) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:
(a) Section 63A-3-106;
(b) Section 63A-3-107; and
(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

Amended by Chapter 335, 2015 General Session

63G-2-502 State Records Committee -- Duties.
(1) The records committee shall:
(a) meet at least once every three months;
(b) review and approve schedules for the retention and disposal of records;
(c) hear appeals from determinations of access as provided by Section 63G-2-403;
(d) determine disputes submitted by the state auditor under Subsection 67-3-1(15)(d); and
(e) appoint a chairman from among its members.
(2) The records committee may:
(a) make rules to govern its own proceedings as provided by Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and
(b) by order, after notice and hearing, reassign classification and designation for any record series by a governmental entity if the governmental entity's classification or designation is inconsistent with this chapter.
(3) The records committee shall annually appoint an executive secretary to the records committee. The executive secretary may not serve as a voting member of the committee.
(4) Five members of the records committee are a quorum for the transaction of business.
(5) The state archives shall provide staff and support services for the records committee.
(6) If the records committee reassigns the classification or designation of a record or record series under Subsection (2)(b), any affected governmental entity or any other interested person may appeal the reclassification or redesignation to the district court. The district court shall hear the matter de novo.
(7) The Office of the Attorney General shall provide counsel to the records committee and shall review proposed retention schedules.

Amended by Chapter 174, 2015 General Session

Part 6
Collection of Information and Accuracy of Records

63G-2-601 Rights of individuals on whom data is maintained -- Classification statement -- Notice to provider of information.

(1)
(a) Each governmental entity shall file with the state archivist a statement explaining the purposes for which a record series that is designated as private or controlled is collected and used by that governmental entity.
(b) The statement filed under Subsection (1)(a) is a public record.
(2)
(a) A governmental entity shall provide notice of the following to a person that is asked to furnish information that could be classified as a private or controlled record:
(i) the reasons the person is asked to furnish the information;
(ii) the intended uses of the information;
(iii) the consequences for refusing to provide the information; and
(iv) the classes of persons and the governmental entities that currently:
(A) share the information with the governmental entity; or
(B) receive the information from the governmental entity on a regular or contractual basis.
(b) The notice shall be:
(i) posted in a prominent place at all locations where the governmental entity collects the information; or
(ii) included as part of the documents or forms that are used by the governmental entity to collect the information.
(3) Upon request, each governmental entity shall explain to a person:
(a) the reasons the person is asked to furnish information that could be classified as a private or controlled record;
(b) the intended uses of the information referred to in Subsection (3)(a);
(c) the consequences for refusing to provide the information referred to in Subsection (3)(a); and
(d) the reasons and circumstances under which the information referred to in Subsection (3)(a) may be shared with or provided to other persons or governmental entities.
(4) A governmental entity may use private or controlled records only for those purposes:
(a) given in the statement filed with the state archivist under Subsection (1); or
(b) for which another governmental entity may use the record under Section 63G-2-206.

Renumbered and Amended by Chapter 382, 2008 General Session

63G-2-602 Disclosure to subject of records -- Context of use.

When providing records under Subsection 63G-2-202(1) or when providing public records about an individual to the persons specified in Subsection 63G-2-202(1), a governmental entity shall, upon request, disclose the context in which the record is used.

Renumbered and Amended by Chapter 382, 2008 General Session

63G-2-603 Requests to amend a record -- Appeals.

(1) Proceedings of state agencies under this section shall be governed by Title 63G, Chapter 4, Administrative Procedures Act.
(2)
(a) Subject to Subsection (8), an individual may contest the accuracy or completeness of any public, or private, or protected record concerning him by requesting the governmental entity to amend the record. However, this section does not affect the right of access to private or protected records.
(b) The request shall contain the following information:
(i) the requester's name, mailing address, and daytime telephone number; and
(ii) a brief statement explaining why the

governmental entity should amend the record.
(3) The governmental entity shall issue an order either approving or denying the request to amend as provided in Title 63G, Chapter 4, Administrative Procedures Act, or, if the act does not apply, no later than 30 days after receipt of the request.
(4) If the governmental entity approves the request, it shall correct all of its records that contain the same incorrect information as soon as practical. A governmental entity may not disclose the record until it has amended it.
(5) If the governmental entity denies the request, it shall:
(a) inform the requester in writing; and
(b) provide a brief statement giving its reasons for denying the request.
(6)
(a) If a governmental entity denies a request to amend a record, the requester may submit a written statement contesting the information in the record.
(b) The governmental entity shall:
(i) file the requester's statement with the disputed record if the record is in a form such that the statement can accompany the record or make the statement accessible if the record is not in a form such that the statement can accompany the record; and
(ii) disclose the requester's statement along with the information in the record whenever the governmental entity discloses the disputed information.
(7) The requester may appeal the denial of the request to amend a record pursuant to the Administrative Procedures Act or, if that act does not apply, to district court.
(8) This section does not apply to records relating to title to real or personal property, medical records, judicial case files, or any other records that the governmental entity determines must be maintained in their original form to protect the public interest and to preserve the integrity of the record system.

Renumbered and Amended by Chapter 382, 2008 General Session

63G-2-604 Retention and disposition of records.
(1)
(a) Except for a governmental entity that is permitted to maintain its own retention schedules under Part 7, Applicability to Political Subdivisions, the Judiciary, and the Legislature, each governmental entity shall file with the State Records Committee a proposed schedule for the retention and disposition of each type of material that is defined as a record under this chapter.
(b) After a retention schedule is reviewed and approved by the State Records Committee under Subsection 63G-2-502(1)(b), the governmental entity shall maintain and destroy records in accordance with the retention schedule.
(c) If a governmental entity subject to the provisions of this section has not received an approved retention schedule for a specific type of material that is classified as a record under this chapter, the model retention schedule maintained by the state archivist shall govern the retention and destruction of that type of material.
(2) A retention schedule that is filed with or approved by the State Records Committee under the requirements of this section is a public record.

Renumbered and Amended by Chapter 382, 2008 General Session

Part 7
Applicability to Political Subdivisions, the Judiciary, and the Legislature

63G-2-701 Political subdivisions may adopt ordinances in compliance with chapter -- Appeal process.
(1) As used in this section:
(a) "Access denial" means the same as that term is defined in Section 63G-2-400.5.

(b) “Interested party” means the same as that term is defined in Section 63G-2-400.5.

(c) “Requester” means the same as that term is defined in Section 63G-2-400.5.

(2)

(a) Each political subdivision may adopt an ordinance or a policy applicable throughout its jurisdiction relating to information practices including classification, designation, access, denials, segregation, appeals, management, retention, and amendment of records.

(b) The ordinance or policy shall comply with the criteria set forth in this section.

(c) If any political subdivision does not adopt and maintain an ordinance or policy, then that political subdivision is subject to this chapter.

(d) Notwithstanding the adoption of an ordinance or policy, each political subdivision is subject to Part 1, General Provisions, Part 3, Classification, and Sections 63A-12-105, 63A-12-107, 63G-2-201, 63G-2-202, 63G-2-205, 63G-2-206, 63G-2-601, and 63G-2-602.

(e) Every ordinance, policy, or amendment to the ordinance or policy shall be filed with the state archives no later than 30 days after its effective date.

(f) The political subdivision shall also report to the state archives all retention schedules, and all designations and classifications applied to record series maintained by the political subdivision.

(g) The report required by Subsection (2)(f) is notification to state archives of the political subdivision’s retention schedules, designations, and classifications. The report is not subject to approval by state archives. If state archives determines that a different retention schedule is needed for state purposes, state archives shall notify the political subdivision of the state’s retention schedule for the records and shall maintain the records if requested to do so under Subsection 63A-12-105(2).

(3) Each ordinance or policy relating to information practices shall:

(a) provide standards for the classification and designation of the records of the political subdivision as public, private, controlled, or protected in accordance with Part 3, Classification;

(b) require the classification of the records of the political subdivision in accordance with those standards;

(c) provide guidelines for establishment of fees in accordance with Section 63G-2-203; and

(d) provide standards for the management and retention of the records of the political subdivision comparable to Section 63A-12-103.

(4)

(a) Each ordinance or policy shall establish access criteria, procedures, and response times for requests to inspect, obtain, or amend records of the political subdivision, and time limits for appeals consistent with this chapter.

(b) In establishing response times for access requests and time limits for appeals, the political subdivision may establish reasonable time frames different than those set out in Section 63G-2-204 and Part 4, Appeals, if it determines that the resources of the political subdivision are insufficient to meet the requirements of those sections.

(5)

(a) A political subdivision shall establish an appeals process for persons aggrieved by classification, designation, or access decisions.

(b) A political subdivision’s appeals process shall include a process for a requester or interested party to appeal an access denial to a person designated by the political subdivision as the chief administrative officer for purposes of an appeal under Section 63G-2-401.

(c)

(i) A political subdivision may establish an appeals board to decide an appeal of a decision of the chief administrative officer affirming an access denial.

(ii) An appeals board established by a political

subdivision shall be composed of three members:
(A) one of whom shall be an employee of the political subdivision; and
(B) two of whom shall be members of the public, at least one of whom shall have professional experience with requesting or managing records.
(iii) If a political subdivision establishes an appeals board, any appeal of a decision of a chief administrative officer shall be made to the appeals board.
(iv) If a political subdivision does not establish an appeals board, the political subdivision's appeals process shall provide for an appeal of a chief administrative officer's decision to the records committee, as provided in Section 63G-2-403.

(6)
(a) A political subdivision or requester may appeal an appeals board decision:
(i) to the records committee, as provided in Section 63G-2-403; or
(ii) by filing a petition for judicial review with the district court.
(b) The contents of a petition for judicial review under Subsection (6)(a)(ii) and the conduct of the proceeding shall be in accordance with Sections 63G-2-402 and 63G-2-404.
(c) A person who appeals an appeals board decision to the records committee does not lose or waive the right to seek judicial review of the decision of the records committee.

(7) Any political subdivision that adopts an ordinance or policy under Subsection (1) shall forward to state archives a copy and summary description of the ordinance or policy.

Amended by Chapter 335, 2015 General Session

63G-2-702 Applicability to the judiciary.

(1) The judiciary is subject to the provisions of this chapter except as provided in this section.

(2)
(a) The judiciary is not subject to Part 4, Appeals, except as provided in Subsection (5).
(b) The judiciary is not subject to Part 5, State Records Committee, and Part 6, Collection of Information and Accuracy of Records.
(c) The judiciary is subject to only the following sections in Part 9, Public Associations: Sections 63A-12-105 and 63A-12-106.

(3) The Judicial Council, the Administrative Office of the Courts, the courts, and other administrative units in the judicial branch shall designate and classify their records in accordance with Sections 63G-2-301 through 63G-2-305.

(4) Substantially consistent with the provisions of this chapter, the Judicial Council shall:
(a) make rules governing requests for access, fees, classification, designation, segregation, management, retention, denials and appeals of requests for access and retention, and amendment of judicial records;
(b) establish an appellate board to handle appeals from denials of requests for access and provide that a requester who is denied access by the appellate board may file a lawsuit in district court; and
(c) provide standards for the management and retention of judicial records substantially consistent with Section 63A-12-103.

(5) Rules governing appeals from denials of requests for access shall substantially comply with the time limits provided in Section 63G-2-204 and Part 4, Appeals.

(6) Upon request, the state archivist shall:
(a) assist with and advise concerning the establishment of a records management program in the judicial branch; and
(b) as required by the judiciary, provide program services similar to those available to the executive and legislative branches of government as provided in this chapter and Title 63A, Chapter 12, Public Records Management Act.

Amended by Chapter 369, 2012 General Session

63G-2-703 Applicability to the Legislature.
(1) The Legislature and its staff offices shall designate and classify records in accordance with Sections 63G-2-301 through 63G-2-305 as public, private, controlled, or protected.
(2)
(a) The Legislature and its staff offices are not subject to Section 63G-2-203 or to Part 4, Appeals, Part 5, State Records Committee, or Part 6, Collection of Information and Accuracy of Records.
(b) The Legislature is subject to only the following sections in Title 63A, Chapter 12, Public Records Management Act: Sections 63A-12-102 and 63A-12-106.
(3) The Legislature, through the Legislative Management Committee:
(a) shall establish policies to handle requests for classification, designation, fees, access, denials, segregation, appeals, management, retention, and amendment of records; and
(b) may establish an appellate board to hear appeals from denials of access.
(4) Policies shall include reasonable times for responding to access requests consistent with the provisions of Part 2, Access to Records, fees, and reasonable time limits for appeals.
(5) Upon request, the state archivist shall:
(a) assist with and advise concerning the establishment of a records management program in the Legislature; and
(b) as required by the Legislature, provide program services similar to those available to the executive branch of government, as provided in this chapter and Title 63A, Chapter 12, Public Records Management Act.

Amended by Chapter 258, 2015 General Session

Part 8
Remedies

63G-2-801 Criminal penalties.
(1)
(a) A public employee or other person who has lawful access to any private, controlled, or protected record under this chapter, and who intentionally discloses, provides a copy of, or improperly uses a private, controlled, or protected record knowing that the disclosure or use is prohibited under this chapter, is, except as provided in Subsection 53-5-708(1)(c), guilty of a class B misdemeanor.
(b) It is a defense to prosecution under Subsection (1)(a) that the actor used or released private, controlled, or protected information in the reasonable belief that the use or disclosure of the information was necessary to expose a violation of law involving government corruption, abuse of office, or misappropriation of public funds or property.
(c) It is a defense to prosecution under Subsection (1)(a) that the record could have lawfully been released to the recipient if it had been properly classified.
(d) It is a defense to prosecution under Subsection (1)(a) that the public employee or other person disclosed, provided, or used the record based on a good faith belief that the disclosure, provision, or use was in accordance with the law.
(2)
(a) A person who by false pretenses, bribery, or theft, gains access to or obtains a copy of any private, controlled, or protected record to which the person is not legally entitled is guilty of a class B misdemeanor.
(b) No person shall be guilty under Subsection (2)(a) who receives the record, information, or copy after the fact and without prior knowledge of or participation in the false pretenses, bribery, or theft.

(3)
(a) A public employee who intentionally refuses to release a record, the disclosure of which the employee knows is required by law, is guilty of a class B misdemeanor.
(b) It is a defense to prosecution under Subsection (3)(a) that the public employee's failure to release the record was based on a good faith belief that the public employee was acting in accordance with the requirements of law.
(c) A public employee who intentionally refuses to release a record, the disclosure of which the employee knows is required by a final unappealed order from a government entity, the records committee, or a court is guilty of a class B misdemeanor.

Amended by Chapter 298, 2013 General Session

63G-2-802 Injunction -- Attorney fees.
(1) A district court in this state may enjoin any governmental entity or political subdivision that violates or proposes to violate the provisions of this chapter.
(2)
(a) A district court may assess against any governmental entity or political subdivision reasonable attorney fees and other litigation costs reasonably incurred in connection with a judicial appeal of a denial of a records request if the requester substantially prevails.
(b) In determining whether to award attorneys' fees under this section, the court shall consider:
(i) the public benefit derived from the case;
(ii) the nature of the requester's interest in the records; and
(iii) whether the governmental entity's or political subdivision's actions had a reasonable basis.
(c) Attorney fees shall not ordinarily be awarded if the purpose of the litigation is primarily to benefit the requester's financial or commercial interest.
(3) Neither attorney fees nor costs shall be awarded for fees or costs incurred during administrative proceedings.
(4) Notwithstanding Subsection (2), a court may only award fees and costs incurred in connection with appeals to district courts under Subsection 63G-2-404(2) if the fees and costs were incurred 20 or more days after the requester provided to the governmental entity or political subdivision a statement of position that adequately explains the basis for the requester's position.
(5) Claims for attorney fees as provided in this section or for damages are subject to Title 63G, Chapter 7, Governmental Immunity Act of Utah.

Renumbered and Amended by Chapter 382, 2008 General Session

63G-2-803 No individual liability for certain decisions of a governmental entity.
(1) Neither the governmental entity, nor any officer or employee of the governmental entity, is liable for damages resulting from the release of a record where the person or government requesting the record presented evidence of authority to obtain the record even if it is subsequently determined that the requester had no authority.
(2) Neither the governmental entity, nor any officer or employee of the governmental entity, is liable for damages arising from the negligent disclosure of records classified as private under Subsection 63G-2-302(1)(g) unless:
(a) the disclosure was of employment records maintained by the governmental entity; or
(b) the current or former government employee had previously filed the notice required by Section 63G-2-303 and:
(i) the government entity did not take reasonable steps to preclude access or distribution of the record; or
(ii) the release of the record was otherwise willfully or grossly negligent.

(3) A mailing from a government agency to an individual who has filed an application under Section 63G-2-303 is not a wrongful disclosure under this chapter or under Title 63A, Chapter 12, Public Records Management Act.

Amended by Chapter 426, 2013 General Session

63G-2-804 Violation of provision of chapter -- Penalties for intentional mutilation or destruction -- Disciplinary action.

A governmental entity may take disciplinary action which may include suspension or discharge against any employee of the governmental entity who intentionally violates any provision of this chapter or Subsection 63A-12-105(3).

Amended by Chapter 44, 2009 General Session

Part 9
Public Associations

63G-2-901 Definitions -- Public associations subject to act.

(1) As used in this section:

(a) "Public association" means any association, organization, or society whose members include elected or appointed public officials and for which public funds are used or paid to the public association for membership dues or for other support for the official's participation in the public association.

(b)

(i) "Public funds" means any money received by a public entity from appropriations, taxes, fees, interest, or other returns on investment.

(ii) "Public funds" does not include money donated to a public entity by a person or entity.

(2) The budget documents and financial statements of a public association shall be released pursuant to a written request if 50% or more of the public association's:

(a) members are elected or appointed public officials from this state; and

(b) membership dues or other financial support come from public funds from this state.

Renumbered and Amended by Chapter 382, 2008 General Session

STATUTES 3 – OPEN AND PUBLIC MEETINGS STATUTE 2016

Chapter 4
Open and Public Meetings Act

Part 1
General Provisions

52-4-101 Title.

This chapter is known as the "Open and Public Meetings Act."

Enacted by Chapter 14, 2006 General Session

52-4-102 Declaration of public policy.

(1) The Legislature finds and declares that the state, its agencies and political subdivisions, exist to aid in the conduct of the people's business.
(2) It is the intent of the Legislature that the state, its agencies, and its political subdivisions:
(a) take their actions openly; and
(b) conduct their deliberations openly.

Renumbered and Amended by Chapter 14, 2006 General Session

52-4-103 Definitions.

As used in this chapter:
(1) "Anchor location" means the physical location from which:
(a) an electronic meeting originates; or
(b) the participants are connected.
(2) "Capitol hill complex" means the grounds and buildings within the area bounded by 300 North Street, Columbus Street, 500 North Street, and East Capitol Boulevard in Salt Lake City.
(3) "Convening" means the calling together of a public body by a person authorized to do so for the express purpose of discussing or acting upon a subject over which that public body has jurisdiction or advisory power.
(4) "Electronic meeting" means a public meeting convened or conducted by means of a conference using electronic communications.
(5) "Electronic message" means a communication transmitted electronically, including:
(a) electronic mail;
(b) instant messaging;
(c) electronic chat;
(d) text messaging as defined in Section 76-4-401; or
(e) any other method that conveys a message or facilitates communication electronically.
(6)
(a) "Meeting" means the convening of a public body or a specified body, with a quorum present, including a workshop or an executive session, whether in person or by means of electronic communications, for the purpose of discussing, receiving comments from the public about, or acting upon a matter over which the public body or specific body has jurisdiction or advisory power.
(b) "Meeting" does not mean:
(i) a chance gathering or social gathering; or
(ii) a convening of the State Tax Commission to consider a confidential tax matter in accordance with Section 59-1-405.
(c) "Meeting" does not mean the convening of a public body that has both legislative and executive responsibilities if:
(i) no public funds are appropriated for expenditure during the time the public body is convened; and
(ii) the public body is convened solely for the discussion or implementation of administrative or operational matters:
(A) for which no formal action by the public body is required; or
(B) that would not come before the public body for discussion or action.
(7) "Monitor" means to hear or observe, live, by audio or video equipment, all of the public statements of each member of the public body who is participating in a meeting.
(8) "Participate" means the ability to communicate

with all of the members of a public body, either verbally or electronically, so that each member of the public body can hear or observe the communication.

(9)

(a) "Public body" means any administrative, advisory, executive, or legislative body of the state or its political subdivisions that:

(i) is created by the Utah Constitution, statute, rule, ordinance, or resolution;

(ii) consists of two or more persons;

(iii) expends, disburses, or is supported in whole or in part by tax revenue; and

(iv) is vested with the authority to make decisions regarding the public's business.

(b) "Public body" includes, as defined in Section 11-13-103, an interlocal entity or joint or cooperative undertaking.

(c) "Public body" does not include a:

(i) political party, political group, or political caucus;

(ii) conference committee, rules committee, or sifting committee of the Legislature; or

(iii) school community council or charter trust land council as defined in Section 53A-1a-108.1.

(10) "Public statement" means a statement made in the ordinary course of business of the public body with the intent that all other members of the public body receive it.

(11)

(a) "Quorum" means a simple majority of the membership of a public body, unless otherwise defined by applicable law.

(b) "Quorum" does not include a meeting of two elected officials by themselves when no action, either formal or informal, is taken on a subject over which these elected officials have advisory power.

(12) "Recording" means an audio, or an audio and video, record of the proceedings of a meeting that can be used to review the proceedings of the meeting.

(13) "Specified body":

(a) means an administrative, advisory, executive, or legislative body that:

(i) is not a public body;

(ii) consists of three or more members; and

(iii) includes at least one member who is:

(A) a legislator; and

(B) officially appointed to the body by the president of the Senate, speaker of the House of Representatives, or governor; and

(b) does not include a body listed in Subsection (9)(c)(ii).

(14) "Transmit" means to send, convey, or communicate an electronic message by electronic means.

Amended by Chapter 77, 2016 General Session

52-4-104 Training.

The presiding officer of the public body shall ensure that the members of the public body are provided with annual training on the requirements of this chapter.

Enacted by Chapter 263, 2006 General Session

Part 2
Meetings

52-4-201 Meetings open to the public -- Exceptions.

(1) A meeting is open to the public unless closed under Sections 52-4-204, 52-4-205, and 52-4-206.

(2)

(a) A meeting that is open to the public includes a workshop or an executive session of a public body in which a quorum is present, unless closed in accordance with this chapter.

(b) A workshop or an executive session of a public body in which a quorum is present that is held on the same day as a regularly scheduled public meeting of the public body may only be

held at the location where the public body is holding the regularly scheduled public meeting unless:

(i) the workshop or executive session is held at the location where the public body holds its regularly scheduled public meetings but, for that day, the regularly scheduled public meeting is being held at different location;

(ii) any of the meetings held on the same day is a site visit or a traveling tour and, in accordance with this chapter, public notice is given;

(iii) the workshop or executive session is an electronic meeting conducted according to the requirements of Section 52-4-207; or

(iv) it is not practicable to conduct the workshop or executive session at the regular location of the public body's open meetings due to an emergency or extraordinary circumstances.

Renumbered and Amended by Chapter 14, 2006 General Session
Amended by Chapter 263, 2006 General Session

52-4-202 Public notice of meetings -- Emergency meetings.

(1)

(a)

(i) A public body shall give not less than 24 hours' public notice of each meeting.

(ii) A specified body shall give not less than 24 hours' public notice of each meeting that the specified body holds on the capitol hill complex.

(b) The public notice required under Subsection (1)(a) shall include the meeting:

(i) agenda;

(ii) date;

(iii) time; and

(iv) place.

(2)

(a) In addition to the requirements under Subsection (1), a public body which holds regular meetings that are scheduled in advance over the course of a year shall give public notice at least once each year of its annual meeting schedule as provided in this section.

(b) The public notice under Subsection (2)(a) shall specify the date, time, and place of the scheduled meetings.

(3)

(a) A public body or specified body satisfies a requirement for public notice by:

(i) posting written notice:

(A) at the principal office of the public body or specified body, or if no principal office exists, at the building where the meeting is to be held; and

(B) on the Utah Public Notice Website created under Section 63F-1-701; and

(ii) providing notice to:

(A) at least one newspaper of general circulation within the geographic jurisdiction of the public body; or

(B) a local media correspondent.

(b) A public body or specified body is in compliance with the provisions of Subsection (3)(a)(ii) by providing notice to a newspaper or local media correspondent under the provisions of Subsection 63F-1-701(4)(d).

(c) A public body whose limited resources make compliance with Subsection (3)(a)(i)(B) difficult may request the Division of Archives and Records Service, created in Section 63A-12-101, to provide technical assistance to help the public body in its effort to comply.

(4) A public body and a specified body are encouraged to develop and use additional electronic means to provide notice of their meetings under Subsection (3).

(5)

(a) The notice requirement of Subsection (1) may be disregarded if:

(i) because of unforeseen circumstances it is necessary for a public body or specified body

to hold an emergency meeting to consider matters of an emergency or urgent nature; and

(ii) the public body or specified body gives the best notice practicable of:

(A) the time and place of the emergency meeting; and

(B) the topics to be considered at the emergency meeting.

(b) An emergency meeting of a public body may not be held unless:

(i) an attempt has been made to notify all the members of the public body; and

(ii) a majority of the members of the public body approve the meeting.

(6)

(a) A public notice that is required to include an agenda under Subsection (1) shall provide reasonable specificity to notify the public as to the topics to be considered at the meeting. Each topic shall be listed under an agenda item on the meeting agenda.

(b) Subject to the provisions of Subsection (6)(c), and at the discretion of the presiding member of the public body, a topic raised by the public may be discussed during an open meeting, even if the topic raised by the public was not included in the agenda or advance public notice for the meeting.

(c) Except as provided in Subsection (5), relating to emergency meetings, a public body may not take final action on a topic in an open meeting unless the topic is:

(i) listed under an agenda item as required by Subsection (6)(a); and

(ii) included with the advance public notice required by this section.

(7) Except as provided in this section, this chapter does not apply to a specified body.

Amended by Chapter 77, 2016 General Session

52-4-203 Written minutes of open meetings -- Public records -- Recording of meetings.

(1) Except as provided under Subsection (7), written minutes and a recording shall be kept of all open meetings.

(2) Written minutes of an open meeting shall include:

(a) the date, time, and place of the meeting;

(b) the names of members present and absent;

(c) the substance of all matters proposed, discussed, or decided by the public body which may include a summary of comments made by members of the public body;

(d) a record, by individual member, of each vote taken by the public body;

(e) the name of each person who:

(i) is not a member of the public body; and

(ii) after being recognized by the presiding member of the public body, provided testimony or comments to the public body;

(f) the substance, in brief, of the testimony or comments provided by the public under Subsection (2)(e); and

(g) any other information that is a record of the proceedings of the meeting that any member requests be entered in the minutes or recording.

(3) A recording of an open meeting shall:

(a) be a complete and unedited record of all open portions of the meeting from the commencement of the meeting through adjournment of the meeting; and

(b) be properly labeled or identified with the date, time, and place of the meeting.

(4)

(a) As used in this Subsection (4):

(i) “Approved minutes” means written minutes:

(A) of an open meeting; and

(B) that have been approved by the public body that held the open meeting.

(ii) “Electronic information” means information presented or provided in an electronic format.

(iii) “Pending minutes” means written minutes:

(A) of an open meeting; and

(B) that have been prepared in draft form and are subject to change before being

approved by the public body that held the open meeting.

(iv) "Specified local public body" means a legislative body of a county, city, or town.

(v) "State public body" means a public body that is an administrative, advisory, executive, or legislative body of the state.

(vi) "Website" means the Utah Public Notice Website created under Section 63F-1-701.

(b) Pending minutes, approved minutes, and a recording of a public meeting are public records under Title 63G, Chapter 2, Government Records Access and Management Act.

(c) Pending minutes shall contain a clear indication that the public body has not yet approved the minutes or that the minutes are subject to change until the public body approves them.

(d) A state public body and a specified local public body shall require an individual who, at an open meeting of the public body, publicly presents or provides electronic information, relating to an item on the public body's meeting agenda, to provide the public body, at the time of the meeting, an electronic or hard copy of the electronic information for inclusion in the public record.

(e) A state public body shall:

(i) make pending minutes available to the public within 30 days after holding the open meeting that is the subject of the pending minutes;

(ii) within three business days after approving written minutes of an open meeting, post to the website and make available to the public at the public body's primary office a copy of the approved minutes and any public materials distributed at the meeting; and

(iii) within three business days after holding an open meeting, post on the website an audio recording of the open meeting, or a link to the recording.

(f)

(i) A specified local public body shall:

(A) make pending minutes available to the public within 30 days after holding the open meeting that is the subject of the pending minutes;

(B) subject to Subsection (4)(f)(ii), within three business days after approving written minutes of an open meeting, post to the website and make available to the public at the public body's primary office a copy of the approved minutes and any public materials distributed at the meeting; and

(C) within three business days after holding an open meeting, make an audio recording of the open meeting available to the public for listening.

(ii) A specified local public body of a city of the fifth class or town is encouraged to comply with Subsection (4)(f)(i)(B) but is not required to comply until January 1, 2015.

(g) A public body that is not a state public body or a specified local public body shall:

(i) make pending minutes available to the public within a reasonable time after holding the open meeting that is the subject of the pending minutes;

(ii) within three business days after approving written minutes, make the approved minutes available to the public; and

(iii) within three business days after holding an open meeting, make an audio recording of the open meeting available to the public for listening.

(h) A public body shall establish and implement procedures for the public body's approval of the written minutes of each meeting.

(i) Approved minutes of an open meeting are the official record of the meeting.

(5) All or any part of an open meeting may be independently recorded by any person in attendance if the recording does not interfere with the conduct of the meeting.

(6) The written minutes or recording of an open

meeting that are required to be retained permanently shall be maintained in or converted to a format that meets long-term records storage requirements.

(7) Notwithstanding Subsection (1), a recording is not required to be kept of:

(a) an open meeting that is a site visit or a traveling tour, if no vote or action is taken by the public body; or

(b) an open meeting of a local district under Title 17B, Limited Purpose Local Government Entities - Local Districts, or special service district under Title 17D, Chapter 1, Special Service District Act, if the district's annual budgeted expenditures for all funds, excluding capital expenditures and debt service, are $50,000 or less.

Amended by Chapter 83, 2014 General Session

52-4-204 Closed meeting held upon vote of members -- Business -- Reasons for meeting recorded.

(1) A closed meeting may be held if:

(a)

(i) a quorum is present;

(ii) the meeting is an open meeting for which notice has been given under Section 52-4-202; and

(iii)

(A) two-thirds of the members of the public body present at the open meeting vote to approve closing the meeting;

(B) for a meeting that is required to be closed under Section 52-4-205, if a majority of the members of the public body present at an open meeting vote to approve closing the meeting;

(C) for an ethics committee of the Legislature that is conducting an open meeting for the purpose of reviewing an ethics complaint, a majority of the members present vote to approve closing the meeting for the purpose of seeking or obtaining legal advice on legal, evidentiary, or procedural matters, or for conducting deliberations to reach a decision on the complaint; or

(D) for the Political Subdivisions Ethics Review Commission established in Section 11-49-201 that is conducting an open meeting for the purpose of reviewing an ethics complaint in accordance with Section 11-49-701, a majority of the members present vote to approve closing the meeting for the purpose of seeking or obtaining legal advice on legal, evidentiary, or procedural matters, or for conducting deliberations to reach a decision on the complaint; or

(b)

(i) for the Independent Legislative Ethics Commission, the closed meeting is convened for the purpose of conducting business relating to the receipt or review of an ethics complaint, provided that public notice of the closed meeting is given under Section 52-4-202, with the agenda for the meeting stating that the meeting will be closed for the purpose of "conducting business relating to the receipt or review of ethics complaints";

(ii) for the Political Subdivisions Ethics Review Commission established in Section 11-49-201, the closed meeting is convened for the purpose of conducting business relating to the preliminary review of an ethics complaint in accordance with Section 11-49-602, provided that public notice of the closed meeting is given under Section 52-4-202, with the agenda for the meeting stating that the meeting will be closed for the purpose of "conducting business relating to the review of ethics complaints"; or

(iii) for the Independent Executive Branch Ethics Commission created in Section 63A-14-202, the closed meeting is convened for the purpose of conducting business relating to an

ethics complaint, provided that public notice of the closed meeting is given under Section 52-4-202, with the agenda for the meeting stating that the meeting will be closed for the purpose of "conducting business relating to an ethics complaint."

(2) A closed meeting is not allowed unless each matter discussed in the closed meeting is permitted under Section 52-4-205.

(3) An ordinance, resolution, rule, regulation, contract, or appointment may not be approved at a closed meeting.

(4) The following information shall be publicly announced and entered on the minutes of the open meeting at which the closed meeting was approved:

(a) the reason or reasons for holding the closed meeting;

(b) the location where the closed meeting will be held; and

(c) the vote by name, of each member of the public body, either for or against the motion to hold the closed meeting.

(5) Except as provided in Subsection 52-4-205(2), nothing in this chapter shall be construed to require any meeting to be closed to the public.

Amended by Chapter 426, 2013 General Session

52-4-205 Purposes of closed meetings -- Certain issues prohibited in closed meetings.

(1) A closed meeting described under Section 52-4-204 may only be held for:

(a) except as provided in Subsection (3), discussion of the character, professional competence, or physical or mental health of an individual;

(b) strategy sessions to discuss collective bargaining;

(c) strategy sessions to discuss pending or reasonably imminent litigation;

(d) strategy sessions to discuss the purchase, exchange, or lease of real property, including any form of a water right or water shares, if public discussion of the transaction would:

(i) disclose the appraisal or estimated value of the property under consideration; or

(ii) prevent the public body from completing the transaction on the best possible terms;

(e) strategy sessions to discuss the sale of real property, including any form of a water right or water shares, if:

(i) public discussion of the transaction would:

(A) disclose the appraisal or estimated value of the property under consideration; or

(B) prevent the public body from completing the transaction on the best possible terms;

(ii) the public body previously gave public notice that the property would be offered for sale; and

(iii) the terms of the sale are publicly disclosed before the public body approves the sale;

(f) discussion regarding deployment of security personnel, devices, or systems;

(g) investigative proceedings regarding allegations of criminal misconduct;

(h) as relates to the Independent Legislative Ethics Commission, conducting business relating to the receipt or review of ethics complaints;

(i) as relates to an ethics committee of the Legislature, a purpose permitted under Subsection 52-4-204(1)(a)(iii)(C);

(j) as relates to the Independent Executive Branch Ethics Commission created in Section 63A-14-202, conducting business relating to an ethics complaint;

(k) as relates to a county legislative body, discussing commercial information as defined in Section 59-1-404;

(l) as relates to the Utah Higher Education Assistance Authority and its appointed board of directors, discussing fiduciary or commercial information as defined in Section 53B-12-102;

(m) deliberations, not including any information gathering activities, of a public body acting in the capacity of:

(i) an evaluation committee under Title 63G, Chapter 6a, Utah Procurement Code, during the process of evaluating responses to a solicitation, as defined in Section 63G-6a-103;
(ii) a protest officer, defined in Section 63G-6a-103, during the process of making a decision on a protest under Title 63G, Chapter 6a, Part 16, Controversies and Protests; or
(iii) a procurement appeals panel under Title 63G, Chapter 6a, Utah Procurement Code, during the process of deciding an appeal under Title 63G, Chapter 6a, Part 17, Procurement Appeals Board;

(n) the purpose of considering information that is designated as a trade secret, as defined in Section 13-24-2, if the public body's consideration of the information is necessary in order to properly conduct a procurement under Title 63G, Chapter 6a, Utah Procurement Code;

(o) the purpose of discussing information provided to the public body during the procurement process under Title 63G, Chapter 6a, Utah Procurement Code, if, at the time of the meeting:
(i) the information may not, under Title 63G, Chapter 6a, Utah Procurement Code, be disclosed to a member of the public or to a participant in the procurement process; and
(ii) the public body needs to review or discuss the information in order to properly fulfill its role and responsibilities in the procurement process; or

(p) a purpose for which a meeting is required to be closed under Subsection (2).

(2) The following meetings shall be closed:

(a) a meeting of the Health and Human Services Interim Committee to review a fatality review report described in Subsection 62A-16-301(1)(a), and the responses to the report described in Subsections 62A-16-301(2) and (4);

(b) a meeting of the Child Welfare Legislative Oversight Panel to:
(i) review a fatality review report described in Subsection 62A-16-301(1)(a), and the responses to the report described in Subsections 62A-16-301(2) and (4); or
(ii) review and discuss an individual case, as described in Subsection 62A-4a-207(5); and

(c) a meeting of a conservation district as defined in Section 17D-3-102 for the purpose of advising the Natural Resource Conservation Service of the United States Department of Agriculture on a farm improvement project if the discussed information is protected information under federal law.

(3) In a closed meeting, a public body may not:

(a) interview a person applying to fill an elected position;

(b) discuss filling a midterm vacancy or temporary absence governed by Title 20A, Chapter 1, Part 5, Candidate Vacancy and Vacancy and Temporary Absence in Elected Office; or

(c) discuss the character, professional competence, or physical or mental health of the person whose name was submitted for consideration to fill a midterm vacancy or temporary absence governed by Title 20A, Chapter 1, Part 5, Candidate Vacancy and Vacancy and Temporary Absence in Elected Office.

Amended by Chapter 196, 2014 General Session

52-4-206 Record of closed meetings.

(1) Except as provided under Subsection (6), if a public body closes a meeting under Subsection 52-4-205(1), the public body:

(a) shall make a recording of the closed portion of the meeting; and

(b) may keep detailed written minutes that disclose the content of the closed portion of the meeting.

(2) A recording of a closed meeting shall be complete and unedited from the commencement of the closed meeting through adjournment of the

closed meeting.
(3) The recording and any minutes of a closed meeting shall include:
(a) the date, time, and place of the meeting;
(b) the names of members present and absent; and
(c) the names of all others present except where the disclosure would infringe on the confidentiality necessary to fulfill the original purpose of closing the meeting.
(4) Minutes or recordings of a closed meeting that are required to be retained permanently shall be maintained in or converted to a format that meets long-term records storage requirements.
(5) Both a recording and written minutes of closed meetings are protected records under Title 63G, Chapter 2, Government Records Access and Management Act, except that the records may be disclosed under a court order only as provided under Section 52-4-304.
(6) If a public body closes a meeting exclusively for the purposes described under Subsection 52-4-205(1)(a), (1)(f), or (2):
(a) the person presiding shall sign a sworn statement affirming that the sole purpose for closing the meeting was to discuss the purposes described under Subsection 52-4-205(1)(a),(1)(f), or (2); and
(b) the provisions of Subsection (1) of this section do not apply.

Amended by Chapter 239, 2010 General Session

52-4-207 Electronic meetings -- Authorization -- Requirements.
(1) Except as otherwise provided for a charter school in Section 52-4-209, a public body may convene and conduct an electronic meeting in accordance with this section.
(2)
(a) A public body may not hold an electronic meeting unless the public body has adopted a resolution, rule, or ordinance governing the use of electronic meetings.
(b) The resolution, rule, or ordinance may:
(i) prohibit or limit electronic meetings based on budget, public policy, or logistical considerations;
(ii) require a quorum of the public body to:
(A) be present at a single anchor location for the meeting; and
(B) vote to approve establishment of an electronic meeting in order to include other members of the public body through an electronic connection;
(iii) require a request for an electronic meeting to be made by a member of a public body up to three days prior to the meeting to allow for arrangements to be made for the electronic meeting;
(iv) restrict the number of separate connections for members of the public body that are allowed for an electronic meeting based on available equipment capability; or
(v) establish other procedures, limitations, or conditions governing electronic meetings not in conflict with this section.
(3) A public body that convenes or conducts an electronic meeting shall:
(a) give public notice of the meeting:
(i) in accordance with Section 52-4-202; and
(ii) post written notice at the anchor location;
(b) in addition to giving public notice required by Subsection (3)(a), provide:
(i) notice of the electronic meeting to the members of the public body at least 24 hours before the meeting so that they may participate in and be counted as present for all purposes, including the determination that a quorum is present; and
(ii) a description of how the members will be connected to the electronic meeting;
(c) establish one or more anchor locations for the public meeting, at least one of which is in the building and political subdivision where the public body would normally meet if they were not

holding an electronic meeting;
(d) provide space and facilities at the anchor location so that interested persons and the public may attend and monitor the open portions of the meeting; and
(e) if comments from the public will be accepted during the electronic meeting, provide space and facilities at the anchor location so that interested persons and the public may attend, monitor, and participate in the open portions of the meeting.
(4) Compliance with the provisions of this section by a public body constitutes full and complete compliance by the public body with the corresponding provisions of Sections 52-4-201 and 52-4-202.

Amended by Chapter 31, 2011 General Session

52-4-208 Chance or social meetings.
(1) This chapter does not apply to any chance meeting or a social meeting.
(2) A chance meeting or social meeting may not be used to circumvent the provisions of this chapter.

Enacted by Chapter 14, 2006 General Session

52-4-209 Electronic meetings for charter school board.
(1) Notwithstanding the definitions provided in Section 52-4-103 for this chapter, as used in this section:
(a) "Anchor location" means a physical location where:
(i) the charter school board would normally meet if the charter school board were not holding an electronic meeting; and
(ii) space, a facility, and technology are provided to the public to monitor and, if public comment is allowed, to participate in an electronic meeting during regular business hours.
(b) "Charter school board" means the governing board of a school created under Title 53A, Chapter 1a, Part 5, The Utah Charter Schools Act.
(c) "Meeting" means the convening of a charter school board:
(i) with a quorum who:
(A) monitors a website at least once during the electronic meeting; and
(B) casts a vote on a website, if a vote is taken; and
(ii) for the purpose of discussing, receiving comments from the public about, or acting upon a matter over which the charter school board has jurisdiction or advisory power.
(d) "Monitor" means to:
(i) read all the content added to a website by the public or a charter school board member; and
(ii) view a vote cast by a charter school board member on a website.
(e) "Participate" means to add content to a website.
(2)
(a) A charter school board may convene and conduct an electronic meeting in accordance with Section 52-4-207.
(b) A charter school board may convene and conduct an electronic meeting in accordance with this section that is in writing on a website if:
(i) the chair verifies that a quorum monitors the website;
(ii) the content of the website is available to the public;
(iii) the chair controls the times in which a charter school board member or the public participates; and
(iv) the chair requires a person to identify himself or herself if the person:
(A) participates; or
(B) casts a vote as a charter school board member.
(3) A charter school that conducts an electronic meeting under this section shall:
(a) give public notice of the electronic meeting:

(i) in accordance with Section 52-4-202; and
(ii) by posting written notice at the anchor location as required under Section 52-4-207;
(b) in addition to giving public notice required by Subsection (3)(a), provide:
(i) notice of the electronic meeting to the members of the charter school board at least 24 hours before the meeting so that they may participate in and be counted as present for all purposes, including the determination that a quorum is present;
(ii) a description of how the members and the public may be connected to the electronic meeting;
(iii) a start and end time for the meeting, which shall be no longer than 5 days; and
(iv) a start and end time for when a vote will be taken in an electronic meeting, which shall be no longer than four hours; and
(c) provide an anchor location.
(4) The chair shall:
(a) not allow anyone to participate from the time the notice described in Subsection (3)(b)(iv) is given until the end time for when a vote will be taken; and
(b) allow a charter school board member to change a vote until the end time for when a vote will be taken.
(5) During the time in which a vote may be taken, a charter school board member may not communicate in any way with any person regarding an issue over which the charter school board has jurisdiction.
(6) A charter school conducting an electronic meeting under this section may not close a meeting as otherwise allowed under this part.
(7)
(a) Written minutes shall be kept of an electronic meeting conducted as required in Section 52-4-203.
(b)
(i) Notwithstanding Section 52-4-203, a recording is not required of an electronic meeting described in Subsection (2)(b).
(ii) All of the content of the website shall be kept for an electronic meeting conducted under this section.
(c) Written minutes are the official record of action taken at an electronic meeting as required in Section 52-4-203.
(8)
(a) A charter school board shall ensure that the website used to conduct an electronic meeting:
(i) is secure; and
(ii) provides with reasonably certainty the identity of a charter school board member who logs on, adds content, or casts a vote on the website.
(b) A person is guilty of a class B misdemeanor if the person falsely identifies himself or herself as required by Subsection (2)(b)(iv).
(9) Compliance with the provisions of this section by a charter school constitutes full and complete compliance by the public body with the corresponding provisions of Sections 52-4-201 and 52-4-202.

Amended by Chapter 363, 2014 General Session

52-4-210 Electronic message transmissions.

Nothing in this chapter shall be construed to restrict a member of a public body from transmitting an electronic message to other members of the public body at a time when the public body is not convened in an open meeting.

Enacted by Chapter 25, 2011 General Session

Part 3
Enforcement

52-4-301 Disruption of meetings.

This chapter does not prohibit the removal of any person from a meeting, if the person willfully

disrupts the meeting to the extent that orderly conduct is seriously compromised.

Enacted by Chapter 14, 2006 General Session

52-4-302 Suit to void final action -- Limitation -- Exceptions.

(1)

(a) Any final action taken in violation of Section 52-4-201, 52-4-202, 52-4-207, or 52-4-209 is voidable by a court of competent jurisdiction.

(b) A court may not void a final action taken by a public body for failure to comply with the posting written notice requirements under Subsection 52-4-202(3)(a)(i)(B) if:

(i) the posting is made for a meeting that is held before April 1, 2009; or

(ii)

(A) the public body otherwise complies with the provisions of Section 52-4-202; and

(B) the failure was a result of unforeseen Internet hosting or communication technology failure.

(2) Except as provided under Subsection (3), a suit to void final action shall be commenced within 90 days after the date of the action.

(3) A suit to void final action concerning the issuance of bonds, notes, or other evidences of indebtedness shall be commenced within 30 days after the date of the action.

Amended by Chapter 403, 2012 General Session

52-4-303 Enforcement of chapter -- Suit to compel compliance.

(1) The attorney general and county attorneys of the state shall enforce this chapter.

(2) The attorney general shall, on at least a yearly basis, provide notice to all public bodies that are subject to this chapter of any material changes to the requirements for the conduct of meetings under this chapter.

(3) A person denied any right under this chapter may commence suit in a court of competent jurisdiction to:

(a) compel compliance with or enjoin violations of this chapter; or

(b) determine the chapter's applicability to discussions or decisions of a public body.

(4) The court may award reasonable attorney fees and court costs to a successful plaintiff.

Renumbered and Amended by Chapter 14, 2006 General Session
Amended by Chapter 263, 2006 General Session

52-4-304 Action challenging closed meeting.

(1) Notwithstanding the procedure established under Subsection 63G-2-202(7), in any action brought under the authority of this chapter to challenge the legality of a closed meeting held by a public body, the court shall:

(a) review the recording or written minutes of the closed meeting in camera; and

(b) decide the legality of the closed meeting.

(2)

(a) If the judge determines that the public body did not violate Section 52-4-204, 52-4-205, or 52-4-206 regarding closed meetings, the judge shall dismiss the case without disclosing or revealing any information from the recording or minutes of the closed meeting.

(b) If the judge determines that the public body violated Section 52-4-204, 52-4-205, or 52-4-206 regarding closed meetings, the judge shall publicly disclose or reveal from the recording or minutes of the closed meeting all information about the portion of the meeting that was illegally closed.

Amended by Chapter 382, 2008 General Session

52-4-305 Criminal penalty for closed meeting violation.

In addition to any other penalty under this

chapter, a member of a public body who knowingly or intentionally violates or who knowingly or intentionally abets or advises a violation of any of the closed meeting provisions of this chapter is guilty of a class B misdemeanor.

Enacted by Chapter 263, 2006 General Session

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