## 15 Basic Rules of Utah Land Use Regulation

*(Page numbers are from Ground Rules: Your Handbook to Utah Land Use Regulation)*

1. **Changes.** Every year new rules are handed down from the appellate courts and enacted into law on Capitol Hill. In order to operate legally, one must keep up to date with regular changes and refinements in the law. pp. 6.
2. **Legislative Acts.** Unless it conflicts with state or federal statute, City Councils may amend the ordinances, change the zoning map, enact a general plan, and annex land with little fear of legal challenges. Legislative acts (defined in statute as Land Use Regulations) by elected officials will be upheld by the courts unless they violate state or federal land use statutes or case law. pp. 27-42
3. **Referendum.** Those legislative decisions are, however, subject to voter referendum and initiative. pp. 213-230.
4. **Binding.** Once the ordinances, map, general plan and city boundaries are in place, they must be respected. Even the City must follow its own rules as it administers the land use regulation process. The function of those who administer the ordinances is not to determine policy but to follow the rules and ordinances adopted by the legislative body. pp. 209-211.
5. **Administrative Acts.** The entity that acts upon a land use application is called the land use authority for that item. The several land use authorities in any given city may include the staff, the planning commission, a board of adjustment, a hearing officer, or other appointed officials such as a landmark commission, depending on what the issue is and which entity was appointed to act and land use authority for that issue. pp. 23-25
6. **Vested Rights.** If an application complies with the ordinances and rules in place when it is filed, the land use authority must approve it. An amendment to the rules that is under formal consideration at the time of the application (a pending ordinance) may be applied if the amendment would prohibit approval of the application at the time it was submitted. There are exceptions for compelling public interests such as recently discovered geological issues with the land involved. pp. 75-78.
7. **Conditions**. Requirements can only be imposed on approval of an application when those requirements are provided for in the ordinance and meet the applicable requirements for exactions. pp. 75-78.
8. **Exactions.** While there is often a lot of chatter about constitutional property rights, in practice there is usually only one issue where they come into play. When public improvements, impact fees, or other requirements are imposed as a condition of approval for an application, the exaction must further a legitimate

public interest which the entity has the authority to pursue and the burden on the applicant must be roughly equivalent to the burden the applicant imposes on the community. pp. 107-118.

9. **Interpretation.** The wording of an ordinance is to be interpreted based on its plain language to put into effect the legislative intent. Where there are ambiguities and confusing language, they are to be resolved in favor of the use of property. pp. 180-181.
10. **Evidence.** The land use authority may act based on substantial evidence, even if that is not the preponderance of the evidence or clear and convincing evidence. If there is substantial evidence on both sides of an issue, the fact-based parts of a land use decision will be upheld whichever way it decides. pp. 33-39.
11. **Record.** When a land use authority acts, it's decision can only be upheld on appeal if the basis for that decision is found in the record of the decision. Findings of fact and conclusions of law are essential in administrative decision-making. An administrative decision will be upheld if 1) the legal aspects of the decision follow the ordinances, rules, statutes and law and 2) the fact-based aspects of the decision are supported by substantial evidence in the record. Substantial evidence is information that is relevant and credible. The opinions of experts such as engineers, attorneys, planners, real estate professionals, appraisers and other professionals can be evidence. pp. 33-39; 179.
12. **Clamor.** There is no requirement in state law that public hearings be held on administrative matters. Cities may provide for them if desired but it is their choice. Public clamor is appropriate when legislative issues are considered but is not sufficient evidence upon which to base an administrative decision. For those, it should not be taken into account. Opinions by those without particular expertise are not substantial evidence and cannot justify disregarding the opinion of a qualified professional. pp. 84-86.
13. **Due Process**. Those who serve as a land use authority must afford due process to the applicant and others with protected property interests. This includes the right to be notified of any meetings where the application is to be discussed, the right to be heard, the right to respond to evidence presented against their interests, and the right to an unbiased decision-maker. Land use authority members should not be involved in ex-parte communications with the applicant, those who oppose the application or others. They and their close relations should not have any financial interest in the outcome of an application review. pp. 233, 243.
14. **Appeal.** An appeal must be provided for from every administrative decision to the local appeal authority. Legislative issues are appealed only to the court or submitted to referendum. The deadlines for pursuing an appeal, legal action, or

referendum are strict and cannot be avoided. pp. 173-192.

15. **Standing.** The applicant and municipality have standing to file an appeal. Neighbors and other third parties who wish to appeal must show that they have been uniquely harmed or specially prejudiced. pp. 191 footnote 1.

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