



THE UTAH LAND USE INSTITUTE

Updating Local Ordinances

Utah Land Use Regulation Topical Series

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UPDATING LOCAL ORDINANCES

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Introduction

This summary provides a practical guide to ensuring that local land use ordinances are up to date with changing state statutes and appellate court decisions.

Those reviewing this may also be interested to read other topical summaries of Utah land use law at the Land Use Library at utahlanduse.org. A video of a presentation by the author of this article is also available there.

This summary includes changes made to the code by the 2023 General Session of the Utah State Legislature.

Your Step-By-Step Guide To Updating Local Ordinances

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Current Dark-Side Sith Lord (“Darth Vested”)

Your land-use ordinances need to be updated. Yes, yours. I don’t care if you just updated them, or if you have never ever updated them and they work just fine “thank you very much.” Whether you are a large sophisticated City named after, say, a Lake, Park, or Saint, a medium-sized City named after a locally well-known religious figure, or a tiny City named after one of your great-uncles, I guarantee that your ordinances need to be updated.

Why? Because all local ordinances are, in one degree or another, perpetually out of date. Multiple reasons exist. For example, state law changes frequently with regard to land use – sometimes more than once per year. This usually leaves local ordinances different from, and directly conflicting with, superior laws. Sometimes ordinances are out of date with the local land use plan, or worse, out of date with the town itself – with what the town should be or *wants* to be. And sometimes the ordinances are out of date with better ways of managing growth. Bottom line: in all my years as a land-use attorney, I have yet to see ordinances that are not out of date.

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² The Office of the Property Rights Ombudsman has provided funding for this update from the 1% surcharge on all building permits in the State of Utah. Appreciation is also expressed to the Division of Housing and Community Development of the Department of Workforce Services for funding the project which produces these topical summaries of land use regulations. The Utah Land Use Institute also expresses continuing appreciation for the ongoing funding provided by the S. J. and Jessie E. Quinney Foundation and the Dentons Law Firm.

I fully acknowledge that updating ordinances can be a daunting task, however, both in terms of time and expense. But a common misconception, and I would like to drive a stake into the heart of this, is that ordinances need to be updated *all at once*. They do not. And probably can't. A town certainly can spend a load of cash on an expensive consultant to rewrite their whole code, but most of the time that is not needed. The elephant can be eaten one bite at a time, minimizing disruption to operations and expenditure of funds. Besides, updating your ordinances all at once probably means that you will have to start updating again as soon as you are finished.

The trick is to view your land use ordinances not as a sacred cow, but as a real cow. It is a living animal. It needs to be fed and watered. It needs to be milked. OK. That is probably a terrible analogy. But in any event, you need to view your code as an ever-changing tool that needs constant attention and refinement. Never stop improving your code. Never fail to give it attention.

With that in mind, this article is my attempt to give you a step by step plan for updating your land use ordinances, and organized over one year. Using my own observations, and considering what I feel to be the best run cities do, I am going to tell you how to eat that elephant. Of course, the structure of doing it in one year is only a guideline, and an attempt by me to add a cute little theme so you will read this whole article. But the objective really is to provide a sequence of attainable steps to take over time, and then start the whole process again next year. I hope that you will see this as a priority list of things to do in your City or Town to improve your code, the most important things first.

January (Planning Month)

1. Free up your planning commission, and instruct them to plan.

This first step enables all other steps. And in my experience, the best run Cities have made this an ongoing priority. Take an honest look at how your planning commission spent its time over the past year. Then, take a look at your ordinances and how they designate procedural responsibilities to the PC. Then, make whatever adjustments to your ordinances that are needed to achieve the following PC time-goals:

*a. Spend some time in **every** PC meeting on planning for the City's future growth.* Articulate what you want the City to be, and plan to make that happen, be it an update to the code, general plan, or standards and goals. If you are fortunate enough to have planning staff, work closely with these professionals to review areas and ideas for growth. If you do not have professionals on staff, do your best to sketch something out. There are many resources to help with this process. It is not a job that ever finishes.

*b. Spend some time in **every** PC meeting reviewing a section of your code.* Using the code amendment suggestions below, or any suggestion or idea that comes up, do not let a meeting end until some code provision has been discussed and vetted. If the code doesn't work, make a recommendation to the Council to fix it.

c. Spend at least half if the time in PC meeting on planning tasks. This will require most cities to reduce the time spent on non-planning duties, such as administrative land use approvals (conditional uses, final subdivision approval, etc.) significantly. But let's face it some of those jobs can and should be done by staff, and are a not the best use of planning commission time. Get creative with non-planning tasks and who does them, to free up the PC to do its job, which is to PLAN. P.S. This is absolutely not to say that administrative decisions should be given to the City Council. Oh please no. NOOOOOOOOOOOOOO!

2. Revise your General Plan and other plans as needed.

This is a great job for January, because it means a fresh start. Most revisions will not be major. They will mostly involve looking at developments that were approved in the past year, and adjusting the plan based upon what is expected to come next. Do not neglect that plan, now that you freed up the Planning Commission and have plenty of time to spend on it.

February (Education Month)

Get your land use continuing education credit done for the year.

Business is slow in February. Love is in the air. No one wants to look like an idiot during this special time. Schedule and obtain your education credits so that you are not doing them at 10pm in July after a long debate over a hog farm. Also do it so you will be better at your job. For reals.

March (Legislation Month)

1. Incorporate This Year's legislation.

EVERY SINGLE YEAR, the state legislature, whose session ends in early March, makes changes to the state's land use laws. Find out what has been changed in the recent legislative session, and bring your ordinances into compliance. This year, 2023, has seen major changes, particularly to the subdivision code. It will take some work to adopt into your code, and as of this presentation, March is already over. A host of resources and opportunities exist every year to find out what happened. Seek this information out, and then spend time discussing it and incorporating it.

2. Incorporate Last Year's Legislation.

Because you probably forgot. And the year before, and the year before. I have personally seen plenty of ordinances that are 10 years or more behind the State code. Embarrassing. If it makes you feel any better, it is not just you. It's endemic.

April (Process Month)

This is a good time to review your land use application and review processes, as opposed to the substantive legal provisions, to make sure that you are not an April fool. Here are some suggestions:

1. Is the right decision being made by the right body?

Many local government have broken up their land use decisions, assigning certain categories to certain bodies. For example, in many places, City staff can decide simpler conditional use permits, while the planning commission decides the more complicated ones. Create a table in

your ordinance to keep organized regarding what land use authority decides what question. And did I mention the City Council making administrative decisions? I'd rather turn the bacon over with my bare hand.

2. Is there a better way to handle appeals?

Are you seriously still using a Board of Adjustment? Or the City Council?

3. Can you streamline any of your applications?

If your applications are a pain in the neck to process, then change the process.

May (Permitted Uses Month):

1. First, make sure that your code has a statement similar to this one, clear and easy to find:

"All land uses not listed here as permitted or conditional are prohibited." If that is not in your code, make it the absolute first change.

2. Review and update your list of Permitted and Prohibited Uses.

Look at your lists of permitted uses. Every zone in your Town should have one. Think about the zone and the uses that are permitted in that zone. Remember that uses designated as permitted are just allowed in the zone. There is no decision to be made – so make sure that those uses are wanted in those zones. Also, be as specific as you can. Long, specific lists are generally better. Don't assume that a provision prohibiting truck stops will prevent gas stations in a particular zone, for example.

June (Conditional Uses Month):

1. Gut your conditional use list.

Conditional uses have, happily, fallen out of favor. They are still available and legal, and still appropriate in certain circumstances. But it is important for a local government to go frequently go through its lists of conditional uses and decide whether it would be better, and much easier, to just make those items permitted uses with rules and limits, or if you find you never approve them just make them prohibited uses. For example, instead of saying that a grocery store is a conditional use in a residential zone, say that a grocery store is a permitted use but it must not be larger than 10,000s/f, have downward facing lights, no deliveries after 10pm. Just make those rules, so that there is no controversy, no decision to make, no planning commission meeting until 11:30pm, and no appeal.

July (Subdivisions Month)

1. Read a section out loud.

While this works for many types of code, I find that local subdivision ordinances in particular tend to have provisions that make no sense to anyone who speaks English. That is why I suggest reading the code out loud. Problems with the code tend to show themselves that way. And do not assume that even though it does not make sense to you, it probably makes sense to your attorney. What good is that? This code is not the law just for attorneys. It is the law for everyone. So if you are a librarian, for example, and the code does not make sense to you, then it needs to be fixed. However, if you are Tribble and it does not make sense to you, that is probably just fine.

2. Is there an opportunity to create simpler small subdivision process?

Look at Utah Code 10-9a-605. You can do this. It will reduce your headaches.

3. Address ADUs, IADUs, AIRBNBs, STRs.

If you are not sure what they are, ask me.

4. Implement your moderate income and low income housing plan.

Despite the mass protests at City Council meetings, these things are actually good, and should be seriously undertaken in every City. I do not need to get into what the State is doing and what they are requiring local governments to do about this. I will only say that making these available in your City is the right thing to do. It just is.

August (Zoning month)

1. Review your existing zones.

Pick one and look closely at it. Is it where you want it? Is it how you want it? Can you make it better? – Find out the City's water and other resources status, and amend your code accordingly.

2. Create a new zone.

I am only saying this because local officials tend to think that their zones are sacred; that for some reason the wisdom of time has created these perfect entities that should only be discussed by whispering. Nonsense. Baloney. Horse hockey. Etc. You have incredible latitude regarding zoning and what your zones say.

3. Uncreate a zone.

There are other land use regulation options besides zoning. Form-based codes, for example, seemed to be all the rage recently, and are still considered very well for some purposes. Same with PUD's, etc. Be creative. Worst thing that can happen to you is you get kicked off the Planning Commission and now have your Tuesday nights to yourself.

September (Resources Month)

Now that you spent the summer approving about a zillion dollars' worth of development, it may be a good idea to take stock of your Town's resources, such as, for example, and most importantly, water.

1. Figure out how much you have.

How much do you have? Is the way we are handling water working? It is important to look at the amount of water that you ask developers to provide per unit. The wind that is blowing indicates that that number in many cases needs to be reduced. And the law is starting to catch up with that.

2. Pass a resources moratorium.

Pass an ordinance that clearly states that if we lack resources needed for development, that developments cannot be approved until new resources are found. This is important. Well, all of this is important. But this one is too.

3. Review your impact fees.

If you do not have impact fees, good for you. Go directly to #4. If you do, review them once a year to make sure that nothing is out of date or changed. That happens a lot.

October (Clean-Up List Month)

Things are slowing down in the fall. Now is your chance to look at the things that you have been procrastinating – good but unfulfilled ideas, problems that need time to fix and you had no time, etc. Here is a list of possible clean up items:

November (Clean-Up List Month Part II)

And here are more list to be thankful for:

December (Recovery Month)

What happened this year? What unexpected problems arose? How can we solve them? December is the time for, as the saying goes, sharpening the saw. Were there applications that you did not like, but had to approve? Were there disputes over the meaning of a code provision? Did the Ombudsman read you the riot act? Are there things on the list above that we just did not have time to get done?

Remember that your code can always be better. Some provisions are already good, and some are basically roadkill. There should be something that can finish before you take the holiday off. Respond to whatever you are facing right now, or what you know is coming.
