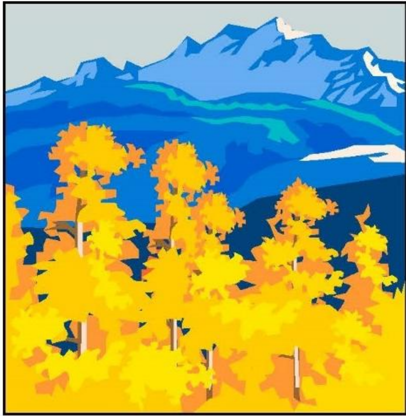

THE UTAH LAND USE INSTITUTE

Referenda and Public Initiatives

Utah Land Use Regulation Topical Series

Dallis Nordstrom Rohde, Author

June 2026

Funding for these materials is provided by the Utah Department of Workforce Services, Division of Housing and Community Development. The Office of the Property Rights Ombudsman has also provided funding for this training program from the 1% surcharge on all building permits in the State of Utah. The Utah Land Use Institute deeply appreciates the ongoing support of the S. J. and Jessie E. Quinney Foundation and Salt Lake County as well.

REFERENDA AND PUBLIC INITIATIVES

Author: Dallis Nordstrom Rohde[1]
Utah Land Use Institute[2]
June 2026

This outline has been updated to reflect changes in the citations to Utah Code which were enacted in 2025.

Introduction

This is one of a series of summaries of the law related to land use and development prepared for the Utah Land Use Institute. It was prepared in association with a presentation by the author which was recorded for online streaming at www.utahlanduse.org/library/. This summary includes changes made to the code by the 2023 General Session of the Utah State Legislature.

Summary of the Law

The United States was born out of a desire to escape the dictates of monarchy. The founders envisioned a system that protects individual rights from government overreach. The Declaration of Independence, authored by Thomas Jefferson, states that governments are created to "secure" the "unalienable rights" of the individual and government power is derived from "the consent of the governed". Later, Jefferson argued that individual rights should be enshrined in the US Constitution saying, "[a] bill of rights is what the people are entitled to against every government on earth, general or particular, and what no just government should refuse, or rest on inference."

The founders also ensured the protection of individual rights from runaway government through checks and balances built into the constitutional design of the US government. The Federalist Papers, written by Alexander Hamilton, James Madison and John Jay to convince New York voters to ratify the US Constitution, describe the checks on government power included in the proposed constitution. Federalist Paper 51 states that a proper balance of power can be maintained "by so contriving the interior structure of the government as that its several constituent parts may, by their mutual relations, be the means of keeping each other in their proper places'.

---

[1] Dallis Nordstrom Rohde is Of Counsel in Buchalter's Salt Lake City and Portland offices, and a member of the Litigation Practice Group. She previously served as general counsel for a regional construction and development company with high profile projects that led to frequent disagreements with various stakeholders. Dallis has also been an advisor, lobbyist, consultant and campaign manager for various state, municipal and issue-oriented campaigns. During undergraduate Dallis was an intern to the Minority Leader at the Utah State House of Representative and then staff member for the House Minority Caucus. Dallis earned her J.D. from the SJ Quinney College of Law at the University of Utah, where she was awarded the best oralist and best team in the national Burton D. Wechsler First Amendment Moot Court Competition. She was an extern for Judge Dee Benson during her third year of law school. She received her B.S. in Political Science from the University of Utah.

[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.

The US Constitution with its checks and balances was ratified in 1787 and amended with the Bill of Rights protecting individuals in 1791. 232 years after the adoption of the Bill of Rights, the United States is still grappling with the same issues: how to strike the balance of powers between the executive, legislative and judicial branches; state versus federal versus municipal power; military versus police power; liberty versus freedom. And, who has the right to vote, and. what matters are subject to popular vote.

Over this 232-year power struggle, states and their voters have adopted ways of preventing government overreach that aren't found in the US Constitution. Specifically, some states have instituted methods of direct democracy giving voters the power to make policy decisions without the proxy of elected representatives.

Utah was the first state to embrace direct democracy by amending the Utah Constitution[3] in 1900 to give voters the right to initiative and referendum. With initiative and referenda, the electorate can make and abolish laws. Initiative[4] allows voters to propose a new law to be placed on the ballot. Referendum[5] makes laws already passed by the legislature subject to review by the voters.

Under initiative and referenda, the people – collectively – have just as much authority to make and unmake laws as do legislatures. Not all states have chosen to give the electorate that much power. Two states allow referenda, but not initiative: Maryland and New Mexico[6]. Of the fifty states approximately one-half do not allow referendums or initiatives: Alabama, Connecticut, Delaware, Georgia, Hawaii, Indiana, Iowa, Kentucky, Kansas, Louisiana, Minnesota, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Vermont, Virginia, West Virginia and Wisconsin[7].

Despite Utah's long history with legislative decisions being subject to referenda pursuant to the Utah Constitution, Utah's legislators want to limit the people's power. Senator Michael McKell (Republican, District 25), was quoted by ksl.com, saying

> "What's happening across the state is that the referendum process is being weaponized to hurt developers and cities as they plan for the future, as they promote projects. We are a republic for a reason. We are a representative

---

[3] The Legislative power of the State shall be vested in: … (b) the people of the State of Utah as provided in Subsection (2). (2) (a) The legal voters of the State of Utah, in the numbers, under the conditions, in the manner, and within the time provided by statute, may: initiate any desired legislation and cause it to be submitted to the people for adoption upon a majority vote of those voting on the legislation, as provided by statute;

* * *

The legal voters of any county, city, or town, in the numbers, under the conditions, in the manner, and within the time provided by statute, may: initiate any desired legislation and cause it to be submitted to the people of the county, city, or town for adoption upon a majority vote of those voting on the legislation, as provided by statute. …

[4] Utah Code Ann. 20A-7-101 (10).

[5] Utah Code Ann. 20A-7-101 (25).

[6] *See* https://ballotpedia.org/States_with_veto_referendum_only (last visited March 5, 2023 at 8:57 pm).

[7] *See* https://ballotpedia.org/States_without_initiative_or_referendum (last visited March 5, 2023 at 7:53 pm).

government. I think the initiative process, the referendum process always deserves a closer look."

Senator McKell sponsored SB199 in the 2023 legislative session with the express aim of restricting referral of local land use decisions. The bill originally would have disallowed referral of any local land use decision approved by a 2/3 vote of the local legislative body. The bill was amended to disallow referral of land use decisions **unanimously** approved by the local legislative body. SB 199 as amended has passed and will take effect on May 5, 2023. If Utah voters want to reclaim their right to refer any land use decision, regardless of the local vote, they must vote legislators out and place the matter on the ballot. In 2022, the legislature also limited referenda by providing that where a newly-enacted land use action involves a transit-oriented development, it would not be subject to referenda if approved by 2/3 of the legislative body which made the decision. The approved bill also raised the signature requirements related to referenda involving transit areas.[8]

How did a majority of legislators, in a western state that prides itself on independence, decide to severely restrict a long-held voter right to refer land use decisions? A review of cases since 2005 shows the tension between elected officials, the appellate courts, and voters over local land use decisions has been rising for years.

In *Mouty v. Sandy City*, 2005 UT 41, 122 P.3d 521, Sandy City alleged that a re-zone was not referable as it was an administrative individual property decision. *Mouty* at ¶9. The developer tried to argue that it had vested development rights based on Sandy City granting the re-zone and that was another basis to reject the referendum. *Mouty* at ¶13. And, that even if it were referable that the decision was a "land use law" subjecting it to a 20% signature requirement instead of 10% of voters and that the sponsors had not met that number to have it placed on the ballot. *Mouty* at ¶9. The Court rejected these arguments and ordered the referendum placed on the ballot. *Mouty* at ¶40.

In *Friends of Maple Mt., Inc. v. Mapleton City*, 2010 UT 11, 228 P.3d 1238, 1245, the Court declared that a city council's adoption of a new zoning classification is per se legislative action[9]. The Gibby's owned 118 acres in Mapleton which they had been attempting to develop for many years, such attempts included litigation with the city. *Id*. at 1240. The Gibby's and Mapleton entered into a settlement agreement which allowed a new zoning designation that applied only to the Gibby's property. *Id*. at 1240-41. A group of Mapleton citizens filed a petition for referendum[10] and sought an injunction pending the referendum, the

---

[8] H.B. 462, amending Utah Code Ann. §§ 20A-7-601(5) and 20A-7-602.8(2)(b).

[9] As we clarify today, the adoption of a new zoning classification consists of the creation of a zoning option that did not previously exist. It is changing the range of available zoning categories versus fitting pieces into the existing zoning categories.

On the other side of the coin, when a municipality acts to adjust an existing zone, it more likely acts administratively. Adjustment of the existing zone includes routine changes such as variances, conditional use, and density changes. *Friends of Maple Mtn.* at 1243.

trial court granted the injunction but following trial determined that the decision was administrative. *Id*. 1241.

In *Carter v. Lehi City*, 2012 UT 2, 269 P.3d 141, the Court engaged in detailed analysis of the history of the legislative process[11] and the Utah Constitution[12]. Thereafter, the[13] Court ordered Lehi City to place

---

[10] Typically, the strong council-mayor form of government has been adopted by larger cities. Many smaller cities, such as Mapleton, have chosen to retain a form of government in which the city council performs both administrative and legislative functions …

* * *

While we recognize that smaller cities may feel a disproportionate burden in the arena of administrative/legislative determinations, this burden does not amount to unconstitutional discrimination. In fact, smaller cities possess many offsetting advantages. Because fewer voters reside in smaller cities than in larger cities, fewer signatures are required to fulfill the statutory requirements for a referendum. Additionally, because of the small size of the community, residents of small cities are closer to and thus have greater access to their governmental unit than do residents of larger cities. Also, in smaller cities a political solution may be more feasible than it would be in a larger city, and thus perhaps more expeditious than a referendum; unsatisfied citizens may always vote their city council members out of office.

Finally, we note that while the "power of the people to legislate directly through referenda is a constitutionally guaranteed right," the constitution does not mandate that the exercise of that right be easy. Regardless of the size of the city, there will always be challenges in bringing about a referendum. However, as long as the right to referendum is not inhibited in any way by the governing body, the constitution is satisfied. *Friends of Maple Mtn*. at 1245.

[11] [T]his matter has caused us to reexamine our precedents defining the nature and extent of the people's power to legislate by initiative. The framework embraced in those precedents has prompted some misgivings over the years. At the core of our concern has been the difficulty of applying the test in our cases predictably and consistently.

This concern is particularly troubling in a field that implicates the constitutional power of the people to initiate legislation. That power is a fundamental guardian of liberty and an ultimate protection against tyranny. Its preservation cannot be left to the whims of a doctrine whose invocation turns on the discretionary decrees of the judicial branch. Of all the branches of government, we are least suited to decide on the wisdom of allowing the people to supplant their representatives in a particular field of regulation. We are the least representative branch of government. There is a troubling irony in our making discretionary calls on the propriety of acts by the ultimate repository of regulatory power. We must assure that our decisions on such vital matters are dictated by law, not by our individual preferences. *Carter* at ⁋⁋2-3.

These features of the legislative power have deep historical roots. Over two hundred years ago, Chief Justice John Marshall explained that '[i]t is the peculiar province of the legislature to prescribe general rules for the government of society; the application of those rules to individuals in society would seem to be the duty of other departments.' The Federalist Papers acknowledged this same distinction, noting that when state legislatures had applied general laws to individual cases, they had violated the separation of powers by usurping power 'belonging to the judicial department.' *Carter* at ⁋39 (internal citations omitted).

[12] We also disavow the inquiry into whether a particular matter is practically 'appropriate' for determination by voters. The constitution leaves no room for the courts to question whether voter initiatives address issues 'of such complexity that it is not practical for the public to give [them] sufficient time and attention to make a proper determination of the matter.' As judges, our role is to interpret the meaning of the legislative power afforded to the people under the text of article VI. We have no business questioning the wisdom or efficiency of the exercise of the people's constitutional authority, least of all on the ground that the people may not be sophisticated enough to use their power intelligently or efficiently. *Carter* at ⁋61 (internal citations omitted).

[13] When the people initiate legislation through article VI, they act as a body 'charged with the exercise of powers

two land-use related initiatives[14] on the ballot.

Krejci v. City of Saratoga Springs, 2013 UT 74, ⁋1, 322 P.3d 662, declared that site-specific rezoning is legislative action subject to referendum. A property owner in Saratoga Springs applied for and was granted a rezone from low to medium density. *Id*. at ⁋2. Thereafter a group of Saratoga Springs residents complied with the statutory requirements for a referendum. *Id*. The property owner filed suit seeking a declaratory judgment that the decision was administrative and the district court agreed and ordered Saratoga Springs not to place the referendum on the ballot. *Id*. at ⁋⁋3-4. Saratoga Springs declined to appeal the decision and the residents filed a petition for extraordinary writ. *Id*. at ⁋⁋4-7.

The Utah Supreme Court found that the residents had standing to bring the writ and reversed the district court, ruling that the referendum is to be placed on the ballot. *Id*. at ⁋⁋20, 39. In making the decision the Court analyzed both the Utah Constitution and the statutory framework to illustrate the differences between an administrative versus legislative decision. *Id*. at ⁋⁋22-26. The Court then went on to further parse out the hallmarks of law making and legislative action. *Id*. at ⁋⁋33-39.

Baker v. Carlson, 2018 UT 59, 437 P.3d 333, related to legislative and administrative action and two referendums about the re-development of the Cottonwood Mall. Despite collecting the requisite number of signatures, Holladay City refused to place the referendums on the ballot. *Baker* at ⁋6.

In a thorough and thoughtful opinion, the district court held that Petitioners were entitled to summary judgment as to the claims related to Resolution 2018-16 (approval of the 2018 site development master plan (SDMP), while Ivory and the City were entitled to summary judgment as to the claims related to Resolution 2018-17 (approval of the Amended Agreement for the Development of Land(ADL)). Accordingly, the district court ordered that the City place the referendum petition on Resolution 2018-16 on the ballot, putting the City's approval of the 2018 SDMP to a public vote. *Baker* at ⁋8.

> We agree with the district court that the City was exercising its legislative powers when it approved Resolution 2018-16. The Amended SDMP promulgates a law of general applicability and its approval required the weighing of broad,

---

properly belonging to' the Legislative Department. In this role, the people are prohibited by article V from 'exercis[ing] any functions appertaining to either' the Executive or Judicial Departments. Accordingly, the executive and judicial powers are not available to the people in the initiative process. Stated another way, the people may initiate legislation, but they lack the authority to execute the law or to adjudicate it. In this sense, 'administrative' does not mean ministerial or unimportant; it simply refers to executive power. The true limit on voter initiatives, then, is that they must be a valid exercise of legislative rather than executive or judicial power. *Carter* at ⁋18.

[14] [Some] zoning decisions are more difficult to classify, as they involve acts in the gray area between the clearly legislative and the clearly executive. Site-specific zoning ordinances present the classic hard case. On one hand such decisions have an executive aspect to them in that they affect only one piece of property and, like variances, do not result in the announcement of a rule that applies generally to other pieces of property. At the same time, however, zoning ordinances typically run with the land and apply equally to the property's present owner and all future owners. Zoning ordinances therefore establish generally applicable rules in the same sense as any other rule that applies to all present and future parties that meet its terms. Such decisions, moreover, often involve the kind of decisionmaking that is 'the essence of legislating'—a 'balancing of policy and public interest factors.' *Carter* at ⁋72 (internal citations omitted).

> competing policy considerations. Resolution 2018-16 is therefore referable.
>
> We also agree with the district court that the City was exercising its administrative powers when it approved Resolution 2018-17. The Amended ADL applies only to the contracting parties and its approval involved the application of law to specific facts. Resolution 2018-17 is therefore not referable. *Baker* at ⁋⁋39-40.

Before the *Baker* decision was released the voters in Holladay roundly defeated the high-density development plans approved by the City Council[15]. The following year one of the founders of the group that ran the successful ballot campaign, Unite for Holladay, indicated that they would support a project that complied with existing zoning[16]. That project, known as Holladay Hills was approved to replace the old Cottonwood Mall, in 2021[17].

In *Downs v. Thompson*, 2019 UT 53, 452 P.3d 1101, the Orem City Recorder rejected a petition for referendum, even though the correct number of signatures had been collected, as it determined it concerned an administrative, rather than legislative, decision. *Downs* at ⁋5. Meanwhile after the petition had been filed, but before all of the signatures were gathered the Orem Public Information Officer sent an e-mail announcing a public meeting to discuss only the opposition to the referendum and the Clerk fined the officer for taking a position on the petition. *Downs* at ⁋6. The officer demanded a review of the fine, which was upheld by the Board of Commissioners; thereafter the officer filed an action in the Fourth District Court which was removed to federal court. *Downs* at ⁋7. The federal court certified three questions to be answered by the Utah Supreme Court. Two of the three will further our understanding of the referendum process:

> (2) Does the term 'ballot proposition' as used in Utah Code Section 20A-11-1205(1) include a referendum during the period of time before its sponsors have obtained the requisite number of signatures on the referendum petition?
> (3) Does the term 'ballot proposition' as used in Utah Code Section 20A-11-1205(1) include a referendum during the signature gathering phase if the challenged local government action is later found to be administrative in nature and therefore not subject to a referendum?

Downs at ⁋1. The Court answered question (2) yes: "the term 'ballot proposition' as used in Utah Code section 20A-11-1205(1) includes all phases of the referendum process, including the signature gathering phase." *Downs* at ⁋23. And, question (3) was likewise answered in the affirmative:

> [T]he entire referendum process is part and parcel to the definition 'referendum.' Indeed, a referendum cannot exist in the absence of the many necessary steps

---

[15] *See* The Salt Lake Tribune, November 6, 2018, published at 9:39 p.m.

[16] *See* The Salt Lake Tribune, July 14, 2019, published at 6:46 p.m.

[17] *See* The Holladay Journal, April 7, 2021, published at 11:26 a.m.

> taken along the way. The fact that a referendum ultimately turns out to be a doomed referendum does not alter its fundamental character throughout the process. We see no prudence in creating a twilight zone in which an action taken by citizens, in full compliance with the statutory guidelines for referenda, is not considered a referendum until later definitively proven to be legislative in nature. The opposite is the case. A referendum may be destined to ultimately fail because it pertains to an administrative action, but it nonetheless remains a referendum at every stage alone the way and, therefore, a referendum in the signature gathering phase is a 'ballot proposition' under Utah Code section 20A-11-1205(1).

Downs at ⁋28. Of note is the Utah Supreme Court decision in *Sevier Power v. Hansen*, where citizens attempted by initiative to restrict the development of coal-fired power plants in the county. The Court approved the proposed legislative act to make conditional use permits for power plants more difficult to obtain. It did not comment on the provisions of the proposed initiative which would have required a public vote to issue a conditional use permit, which the court has traditionally held to be an administrative act.[18] Had the initiative passed and been applied to the issuance of a conditional use permit, there would have been a legitimate issue as to whether it would be appropriate for the public at large to act upon an administrative land use application.[19]

This series of cases reveals the strength of referendum as a tool for Utah voters to object to local land use decisions. Time after time the court found in favor of voters' constitutional and statutory right to refer non-administrative land use decisions and even expanded the definition of what constituted a referrable decision. For those, like Senator Michael McKell, who were frustrated with voter referrals delaying or changing development projects, changing the statute through SB 199 was their best recourse.

Utah law related to local administrative approval of land use applications is specific[20]: *If an application meets the criteria in the local ordinance at the time the application is filed, then the local officials must*

[18] *Baker*, ¶14.

[19] *Sevier Power v. Hansen*, 196 P.3d 583; 2008 UT 72 ¶19.

[20] (1) (a) (i) An applicant who has submitted a complete land use application as described in Subsection (1)(c), including the payment of all application fees, is entitled to substantive review of the application under the land use regulations: (A) in effect on the date that the application is complete; and (B) applicable to the application or to the information shown on the application. (ii) An applicant is entitled to approval of a land use application if the application conforms to the requirements of the applicable land use regulations, land use decisions, and development standards in effect when the applicant submits a complete application and pays application fees, unless: (A) the land use authority, on the record, formally finds that a compelling, countervailing public interest would be jeopardized by approving the application and specifies the compelling, countervailing public interest in writing; or (B) in the manner provided by local ordinance and before the applicant submits the application, the municipality formally initiates proceedings to amend the municipality's land use regulations in a manner that would prohibit approval of the application as submitted. Utah Code Ann. §10-20-902.
(12) (a) "Land use law" means a law of general applicability, enacted based on the weighing of broad, competing policy considerations, that relates to the use of land, including land use regulation, a general plan, a land use development code, an annexation ordinance, the rezoning of a single property or multiple properties, or a comprehensive zoning ordinance or resolution. (b) "Land use law" does not include a land use decision, as defined

approve the application. This applies only to administrative acts, and is not relevant to legislative actions and also not relevant to referenda because only legislative actions are subject to referenda.

The right of referendum allows voters to authorize or abandon only legislative actions already made. Land use actions subject to referendum include:

- Adoption of or amendment to the General Plan.
- Changing the text of the land use ordinances or development standards.
- Amendments to the zoning map, including the rezoning of a particular parcel of land.
- Annexation of new areas into the city limits of a municipality.
- A *Baker* type development approval which involves broad issues of public policy previously not set by a legislative act.

The right to referral still exists, but it just got a lot harder to exercise. Under the new law as changed by SB 199, voters who oppose a specific land use proposal will have to convince at least one local elected official to vote no on the proposal to preserve the right to refer the decision. It is considered by some quite likely that the unanimity exception to the right of referendum will be challenged before the Supreme Court and perhaps be rejected there. It is to be noted that the Utah Constitution places decisions by the state legislature with a 2/3 majority beyond the reach of referendum, but does not so restrict local referenda. When the legislature previously attempted to restrict local initiative rights related to budgets and land use ordinances, the Supreme Court ruled it unconstitutional:

> As set forth in article VI, section 1, the people have reserved the right to initiate "any desired legislation" and submit it to the voters for approval or rejection. This reservation must be read to mean <u>any substantive topic</u> and <u>any legislative act</u>, unless otherwise forbidden by the constitution. The authority of the legislature to set conditions on the exercise of the initiative power by the people must be read in coordination with the other rights of the people expressed and reserved in the constitution. It is limited, as a consequence, to the role of providing for the orderly and reasonable use of the initiative power. It does not follow, logically or constitutionally, that the authority to set limits on <u>conditions, manner, or time</u> gives the legislature the broader authority to deny the initiative right to the people. (<u>Emphasis in original.</u>)

Sevier Power, ¶10. Thus the 2022 and 2023 amendments, which limit the public's ability to refer actions related to only certain land use legislation may also be deemed too restrictive on public rights. The argument against these restrictions may be that they, as did the previously ruled unconstitutional provisions, go beyond the conditions, manner and time requirements and eliminate the ability of the public to vote on certain topic and categories of local actions. Only time will tell how this plays out.

After the *Gallivan v. Walker*, 2002 UT 89, 54 P.3d 1069, decision, Initiative 1 relating to taxing the radioactive waste stored in Utah was placed on the ballot. Just as the traditional legislative process can be tainted by the "iron triangle" so can the initiative and referendum process. The "iron triangle" (comprised of bureaucracy (administrative staff), congressional committee staff (which have specialized knowledge),

---

in Section 10-20-102[20] or 17-79-102[20].

and interest groups (which employ lobbyists)) heavily influence the items that make it onto the ballot and whether initiatives or referendums pass or fail.

Gallivan is illuminating to understanding the competing tensions between the judicial, executive[21] and legislative branches[22] that play out with referendums and initiatives[23]. Additionally, although the initiative and referendum process is not allowed by the U.S. Constitution principals controlled by that jurisprudence are at play in it including the right to vote[24].

---

[21] [T]he multi-county signature requirement is unconstitutional first, and independent, because it violates the uniform operation of laws provision of the Utah Constitution, and also because it violates the *Equal Protection Clause of the United States Constitution.* Additionally, the unconstitutional multi-county signature requirement of *Utah Code section 20A-7-201(2)(a)(ii)* is severable from the statewide initiative enabling statute. Accordingly, Gallivan's petition for an extraordinary writ is granted, and the lieutenant governor is ordered to place the initiative on the 2002 general election ballot. *Gallivan* at ⁋95.

[22] Government . . . is an organization created *by* the people for their own purposes, to wit, for governmental purposes. As such, the government has powers [that] are strictly limited by the constitution. . . . The State of Utah . . . was conceived of dalliance between the Congress of the United States and the people of the Territory of Utah. The Congress passed an act, known as the Enabling Act, 'to enable the people of Utah to form a constitution and State government.' As a result thereof, the people of Utah conceived and gave birth to Siamese twins: A constitution and the State of Utah, inseparable unless both shall die. *Gallivan* at ⁋21 (internal citations omitted).
Article VI, section 1 is not merely a grant of the right to directly legislate, but reserves and guarantees the initiative *power* to the people.

* * *

The power of the legislature and the power of the people to legislate through initiative and referenda are coequal, coextensive, and concurrent and share 'equal dignity.' *Gallivan* at ⁋23 (internal citations omitted).

[23] Because the people's right to directly legislate through initiative and referenda is sacrosanct and a fundamental right, Utah courts must defend it against encroachment and maintain it inviolate.

* * *

Because of the fundamental nature of the right of initiative and its significance to the political power of registered voters of the state, the vitality of ensuring that the right is not effectively abrogated, severely limited, or unduly burdened by the procedures enacted to enable the right and to place initiatives on the ballot is of paramount importance. *Gallivan* at ⁋27 (internal citations omitted).

[24] [N]o right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined. Our Constitution leaves no room for classification of people in a way that unnecessarily abridges this right [to vote]. *Gallivan* at ⁋24 (internal citations omitted).

Like the right to vote generally, the initiative right guarantees participation in the political process.

* * *

The initiative right encourages political dialogue and allows the general populace to have substantive and meaningful participation in enacting legislation that impacts society. It is democracy in its most direct and quintessential form. *Gallivan* at ⁋25 (internal citations omitted).

The voters' right to initiative does not commence at the ballot box: The voters' right to legislate via initiative includes signing a petition to get the proposed initiative on the ballot. Signing a petition is inextricably connected to the voters' right to vote on an initiative because it serves a gatekeeping function to the right to vote. Accordingly, 'the use of . . . petitions . . . to obtain a place on the [state's] ballot is an integral part of [its] elective system.' Restrictions on access to the ballot burden two distinct and fundamental rights, 'the right of individuals to associate for the advancement of political beliefs, and the right of qualified voters, regardless of their political persuasion, to cast their votes effectively.' *Gallivan* at ⁋26 (internal citations omitted).

Because the people's right to directly legislate through initiative and referenda is sacrosanct and a fundamental right,

How legislative bodies in Utah continuously curtail the referendum and initiative process brings to mind the statement "The law is a jealous mistress, and requires a long and constant courtship. It is not won by trifling favors, but by lavish homage[25]." This quote is generally one used in law school to convince students that the only way to become a skilled practitioner is to do nothing except go to class and study for the duration of law school and after to make work your only priority. A better understanding might be that lawmakers do not like their authority usurped by anyone, including the voters that put them in office.

Best Practices[26]

1. The right of referendum and initiative is constitutional and may not be unreasonably restricted. Since that is the law, all involved in the land use arena should respect the voters privilege and work to accommodate it in reasonable form.
2. Local officials can minimize the opportunity for referenda by:
    a. Adopting ordinances that delegate project approvals to administrative bodies such as the planning commission or a development review committee. A land use decision is never referable if the legislative body does not make it.
    b. Allowing the needed zoning amendment or annexation to proceed before consideration of the subdivision plat or site plan. When legislative decisions are mixed with administrative review, public objections can move from the public policy questions involved in zoning and annexation to more specific issues which are best left to administrative review processes and which may more likely generate opposition.
    c. Creating special criteria in the code that administrative bodies must consider when reviewing applications. Legislators my feel more comfortable in delegating decisions to others when the code includes guidelines for those approvals.
    d. Allow permitted uses rather than conditional uses where appropriate. Minimize the need for conditional use permit review by imposing conditions on certain permitted uses in the code instead of allowing those conditions to be created in a case-by-case manner. This would also avoid appeals over conditional use decisions.
    e. Delegate development permit approval to the planning commission or others. Particularly in a Mayor-Council form of government, it can be quite likely that city council approval of a development agreement would be considered a legislative act and thus be subject to referenda.
3. If the locals do not wish to be the entity that has to oppose a referendum all the way to the Supreme Court, specifically allow a referendum on a land use decision by avoiding a unanimous vote to approve the legislative act. Then a referendum can proceed without a ruling from the Supreme Court.

Utah courts must defend it against encroachment and maintain it inviolate.

* * *

Because of the fundamental nature of the right of initiative and its significance to the political power of registered voters of the state, the vitality of ensuring that the right is not effectively abrogated, severely limited, or unduly burdened by the procedures enacted to enable the right and to place initiatives on the ballot is of paramount importance. *Gallivan* at ⁋27 (internal citations omitted).

[25] United States Supreme Court Justice Joseph Story.

[26] Best practices and ordinance considerations are provided by Craig Call of the Utah Land Use Institute who also edited this summary.

4. Those who wish to refer a matter to the voters should persuade at least one member of the council or county commission to vote against the decision.
5. Those who wish to pursue a referendum or initiative must specifically comply with all the requirement of the code. Any error in the required formalities will skuttle the referendum or initiative before any vote can be held. Once deadlines have passed, it is simply too late. It would be wise to retain skilled legal counsel to ensure that all is done in good order.
6. Applicants who wish to avoid an initiative should file their application and pay all fees before an initiative can be formally considered (what ever that means). It may be that an initiative in process can constitute a "pending ordinance" and suspend the applicant's vested rights.

Considerations for Drafting Ordinances

1. Consider providing by ordinance that the planning commission or other administrative body be appointed as the land use authority to approve some or perhaps all development agreements.

2. Consider enacting public engagement processes which can keep the public informed and engaged in development proposals and thus less likely to oppose specific projects.

3. Emphasize the public role in the process of amending both the general plan and land use ordinances and set the stage for citizen "buy in". Don't let the existing general plan and ordinances get stale and go too long without public review and comment.

4. Conduct public hearings to optimize public input. Ensure that local officials appear to be listening and engaging about public concerns. Explain in simple terms what the processes are like to those who come to public meetings and hearings, what the law requires, and how the public can have a role in the land use process. Good meeting management can help to blunt the role of unfounded public opposition.