2018

Utah League of Cities & Towns

General Legislative Session

Effective May 8, 2018 unless noted

Land Use Passed Bills Quick Guide Summary

HB 142 Impact Fee Amendments

https://le.utah.gov/~2018/bills/static/HB0142.html

HB 250 Building Permit and Impact Fees Amendments

https://le.utah.gov/~2018/bills/static/HB0250.html

HB 259 Moderate Income Housing Amendments

https://le.utah.gov/~2018/bills/static/HB0259.html

HB 430 Affordable Housing Amendments

https://le.utah.gov/~2018/bills/static/HB0430.html

HB 462 Homeless Services Amendment

https://le.utah.gov/~2018/bills/static/HB0462.html

HB 361 Billboard Amendments

https://le.utah.gov/~2018/bills/static/HB0361.html

HB 377 Land Use Amendments

https://le.utah.gov/~2018/bills/static/HB0377.html

HB 346 Local Government Plan Review Amendments

https://le.utah.gov/~2018/bills/static/HB0346.html

HB 216 Jordan River Recreation Area

https://le.utah.gov/~2018/bills/static/HB0216.html

HB 249 Statewide Resource Management Plan (Counties)

https://le.utah.gov/~2018/bills/static/HB0249.html

HB 253 Trust Lands Amendment

https://le.utah.gov/~2018/bills/static/HB0253.html

HB 305 Fire Code Amendments

https://le.utah.gov/~2018/bills/static/HB0305.html

HB 372 Point of the Mountain State Land Use Authority

https://le.utah.gov/~2018/bills/static/HB0372.html

LAND USE

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Land Use Passed Bills Quick Guide Summary

SB 96 Canal Amendments

https://le.utah.gov/~2018/bills/static/SB0096.html

SB 136 Transportation Governance Amendments

https://le.utah.gov/~2018/bills/static/SB0136.html

SB 158 Municipal Business Licensing

https://le.utah.gov/~2018/bills/static/SB0158.html

SB 167 Food Truck Regulations Amendment

https://le.utah.gov/~2018/bills/static/SB0167.html

SB 191 State Regulation of Oil and Gas (May be heard in interim for amendments)

https://le.utah.gov/~2018/bills/static/SB0191.html

SB 234 Utah Inland Port Authority

https://le.utah.gov/~2018/bills/static/SB0234.html

SB 158 Municipal Business Licensing

https://le.utah.gov/~2018/bills/static/SB0158.html

SB 167 Food Truck Regulation Amendments

https://le.utah.gov/~2018/bills/static/SB0167.html

LAND USE

Primer on Selected Land Use Bills
& Practice Tips for implementation

#1. HB 250 Building Permit and Impact Fees Amendments

Background:
The Land Use Task Force worked on these issues last year and reached consensus on the impact fee portion of the bill. The building surcharge and legal support and training assistance was discussed in concept. The final numbers were negotiated during the session with input from the League. Another impact fee bill was also approved – **HB 142 Impact Fees Amendments.** This bill added municipal natural gas facilities to definition of public facilities for impact fees.

Bill Summary:

- **Impact fees (11-36a-603)**
  - Clarifies definition of "claimant" by adding "the person who paid an impact fee."
  - If the fee was spent or encumbered, a claimant may challenge whether the entity spent or encumbered it properly one year after the expiration of when the entity had to do so. (The entity must spend or encumber within 6 years.)
  - If the fee was NOT spent or encumbered, a claimant many challenge the fee two years after the expiration of when the entity was supposed to do so, but didn't.
- **Building permit surcharge allocation (15A-1-209)**
  - Entity charges a 1% fee on building permits it issues. It will now transmit 85% to DOPL instead of 80%.
  - DOPL will use 30% of the 85% to provide education to building inspectors.
  - DOPL will use 10% of the 85% to provide training to contractors (individuals licensed in construction trades or related professions).
  - DOPL will transmit 60% of the 85% to OPRO to provide education and training on the drafting and application of land use laws and regulations and land use dispute resolution.
- **Office of Property Rights Ombudsman duties (13-43-203)**
  - OPRO shall use any money transmitted pursuant to 15A-1-209 to pay for dispute resolution and training on drafting and application of land use laws and regulations. Training includes grants to a land use training organization selected by the Land Use and Eminent Doman Advisory Board and approved by the ombudsman and director of the Dept. of Commerce.

Practice Tips:
Impact Fees:

- Review your impact fee ordinance and administrative procedures to make sure you comply with the statute and that you are submitting reporting requirements to the State's Auditors Office as required.

Building Surcharge and OPR training:

- Check your distribution schedule and adjust accordingly.
- Utilize training programs that may result of the new distribution for your appointed and elected officials. ULCT will provide notice of all training opportunities that result from this process.

#2. HB 346 Local Government Plan Review Amendments

Background:

This bill reached consensus in the Land Use Task Force last year. The bill went into effect in 2017 and many of the same provisions are still in effect in this compromise bill. This bill has the same time clock review periods as the 2017 bill and has three categories for plans that are not subject to that review.

> "Plan review" does not mean a review of a document:
> (A) required to be re-submitted for additional modifications or substantive changes identified by the plan review;
> (B) submitted as part of a deferred submittal when requested by the applicant and approved by the building official; or
> (C) that, due to the document's technical nature or on the request of the applicant, is reviewed by a third party.

Bill Summary:

- Amends 10-6-160 effective in 2017
- Defines "lodging establishment"
- Defines "planning review" – means a review to verify that a city has approved the specified elements of a construction project
- Defines what "plan review" DOES NOT mean (see above)
- Defines "structural review" – a review that verifies compliance with
    - Footing size and bar placement
    - Foundation thickness and bar placement
    - Beam and header sizes
    - Nailing patterns
    - Bearing points
    - Structural member size and span
    - Sheathing
    - Or if it exceeds typical "structural review", a review that a licensed engineer conducts.
- Defines "technical nature"—a characteristic that places an item outside the training and expertise of an individual who regularly performs plan reviews.
- Makes permanent the same 14 and 21-day timelines as last year for plan review (with the 3 exemptions listed above).
- Process:
    - If a city doesn't complete the plan review (AS DEFINED) in 14 or 21 days, the applicant may request that the city complete it.
    - If the applicant makes such a request, the city then has 14 or 21 days to do so.
    - An applicant may waive the plan review time requirements, or with the city's consent, establish an alternative time requirement.
    - If a city does not complete the plan review (again, AS DEFINED) within the time period, it may not enforce a plan review requirement so long as a licensed architect and/or engineer has stamped the plan.
    - A city may attach to a reviewed plan a list that includes items "with which a city is concerned and may enforce during construction; and building code violations found in the plan."
    - A city may not require an applicant to redraft a plan if the city requests minor changes as identified in the city's attached list.

- Applicant must ensure that each plan includes a statement that actual construction will comply with local ordinances and building codes.

Practice Tips:
Review the bill with your Building and Planning Staff and adjust your review process accordingly. Again, much of this language existed in 2017 so it should not present major shifts from those made by municipal staff last year to adhere to the statute.

#3. HB 377 Land Use Amendments

Background:
This bill reached consensus in the Land Use Task Force last year. It clarifies when vesting rights are established, reaffirms the scope and process for conditional uses, clarifies the assurance process for subdivisions and clarifies definitions for administrative and legislative decisions. The changes to the conditional use section reaffirms that the process is administrative and that you must have standards of review in your code to apply to each permit reviewed. Additionally, you must enter findings into the record.

Bill Summary:

- **Definitions (10-9a-103)**
  - A "land use decision" means "an administrative decision of a land use authority or appeal authority regarding a land use permit, land use application, or the enforcement of a land use regulation, land use permit, or development agreement."
  - A "land use regulation" means "a legislative decision enacted by ordinance, law, code, map, resolution, specification, fee, or rule that governs the use or development of land; and includes the adoption or amendment of a zoning map or the text of a zoning code."
- **Conditional uses (10-9a-507)**
  - Approval or denial of a conditional use is an administrative decision. This is not new language just reiterated in this update.
  - The land use authority shall approve a conditional use if reasonable conditions are proposed or can be imposed to mitigate. Mitigate does not mean eliminate. Again, not new language just reiterated this year.
  - If a land use authority proposes reasonable conditions, they must be stated on the record and must reasonably relate to mitigating the anticipated detrimental effects.
- **Vesting (10-9a-509)**
  - An applicant who has **submitted** a complete land use application is entitled to substantive review of the application under the land use regulations in effect on the date that the application is complete. This update just reaffirms what was already in the statute.
  - An applicant is entitled to approval of the application if it conforms to the requirements in the **applicable** land use regulations, land use decisions, and development standards in effect when the applicant submits a complete application, and pays all fees. Again this
  - The land use authority can deny the application if it makes a formal finding on the record that a compelling, countervailing public interest would be jeopardized. This must be specified in writing. This update clarifies rights that already were detailed in the code but now makes it explicate that the finding must be written and entered into the record.
- **Improvement completion assurances (10-9a-604.5) & (10-9a-802)**
  - A land use authority shall establish objective inspection standards for required landscaping or infrastructure improvements.
  - Before an applicant starts development or records a plat, the applicant must:
    - Complete required landscaping or infrastructure improvements or post an assurance.

        - If the applicant posts an assurance, the applicant must ensure that it provides for 100% of the required improvements OR, if the city has accepted a portion of the improvements, 100% of the unaccepted improvements.
    - If the applicant posts an assurance, the city must:
        - Establish a system for partial release of assurances as portions of improvements are completed and accepted.
        - Issue or deny a building permit in accordance with 10-9a-802 based on the installation of landscaping or infrastructure improvements.
    - A city may not require an applicant to post an assurance for landscaping or infrastructure improvements that the city has inspected and accepted.
    - At any time before a city accepts an improvement and for the duration of each improvement warranty period, the city may require the applicant to execute an improvement warranty and post an assurance.
    - When a city accepts an improvement completion assurance, the city may not deny a building permit if the development meets the requirements of the building code and fire code.
- **Standard of review (10-9a-801)**
    - A decision is arbitrary and capricious if the decision is not supported by substantial evidence in the record.
- **Enforcement (10-9a-802)**
    - A municipality may not deny a building permit because the applicant has not completed an infrastructure improvement that is not essential to meet the requirements under the building code and fire code, and for which the municipality has accepted an improvement completion assurance for landscaping or infrastructure improvements.

Practice Tips:

Definitions: Check your definitions section of you land use code and make sure that you have these latest definitions. Also remember while you are looking at that section that for best practice you should not include regulations in your definitions. Those need to go into the appropriate zoning section, not the definitions sections.

Conditional Uses: As we have been counseling for years you must have codified standards of review if you use conditional uses in your municipality. You must also link those standards to any conditions that you place on a permit. You must make findings and enter them into the record on how each standard relates directly to a condition when you take final action. We recommend you revisit your zoning districts and examine what conditional uses you have and reevaluate if they work for that zone or would be more appropriate as permitted uses or maybe even not allowed at all. Use conditional uses sparingly and make sure you have standards in place for an objective review. Also remember these are administrative items and no public hearing is required by State law. So please check your hearing and noticing process and evaluate your process. Other resources for conditional uses are available at luau.utah.gov.

Vesting: This update clarifies the vesting statute that has been in place for many years. In plain language – you vest in what you applied for. A complete application and fees trigger vesting. Make sure you have a process for verifying a complete application and that your processes are clear. Make sure you have this definition detailed in your land use codes under the administrative section. 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. **(10-9a-509)**

Assurances:
Many changes were made to the subdivision assurances section in 2013 and 2016. In that process the Land Use Task Force focused on a variety of land use topics, including, subdivision for utilities, illegal exactions, security for public infrastructure, modifying common area on a plat and easing state imposed site plan restrictions in first class counties. Remember back to the 2013 infrastructure "bond" laws. Under these laws there are two different "sureties" to protect the public from shoddy subdividers: one "surety" is to make certain the infrastructure is actually built; a separate surety is a "warranty" that can and should be used to guard against "latent" defects in materials and workmanship. Many cities had combined the two concepts into a single "bond" and are still using that practice today. Each jurisdiction should review the new law with its staff/project engineers to be certain its "bond" practice includes these two concepts and meets the letter of the new law. All of these changes can be found in a summary piece under the Publications tab at luau.utah.gov.

This year the statute was modified to remove land use authority discretion in allowing an applicant to post an improvement completion assurance and prohibits municipalities and counties from denying a building permit application where the land use authority has accepted an improvement completion assurance. Please talk to your city engineer, legal and planning staff so that your assurances process meets all these changes and update your subdivision codes accordingly. And don't forget, last year's legislation requires that all subdivision standards developed by your engineer must be adopted just like any other land use ordinance.

#4. HB 305 Fire Code Amendments

Background:

This item was discussed in the Land Use Task Force last year and we thought we had reached consensus without the need for legislation, but a bill was filed halfway through the session. This bill clarifies the language dealing with a standard for fire access roads in subdivisions and clarifies that municipalities can still withhold issuance of a final certificate of occupancy until permanent roads are complete. This bill amends Chapter 33 of the International Fire Code (IFC).

Bill Summary:

- If an improvement completion assurance has been posted in accordance with 10-9a-604.5, a local jurisdiction may not require permanent roads, or asphalt or concrete on temporary roads, before final approval of the structure served by the road.
- Vehicle access shall be provided to within 100 feet of temporary or permanent fire department connections.
- Vehicle access shall be provided by either temporary or permanent roads.
- Temporary roads shall be constructed with a minimum of site specific required structural fill for permanent roads and road base, or other approved material complying with **local standards.**
- Maintenance. Temporary roads shall be maintained until permanent fire apparatus access roads are available.
- Compaction reports may be required.
- Temporary or permanent fire department access roads shall be functional before construction above the foundation begins and before an appreciable amount of combustible construction materials are on site.

Practice Tips:

Share the bill with your Fire Chief and Building Official. Look at how you define what is required for a sub structure of the road in your ordinances. Check your ordinance to ensure you have a definition of what under construction means in your locality. Contact the South Jordan Fire District at www.sjc.utah.gov for a good example of a notice they created about the change in policy this law requires.

#5. SB 189 Small Wireless Facilities Deployment Act – EFFECTIVE SEPTEMBER 1, 2018

Background: Federal law already requires that cities allow telecommunications access to the right-of way (ROW). SB 189 creates a uniform state-wide process for facilitating that access and compensating cities. Wireless providers have the right to install small wireless facilities and utility poles within the ROW; and collocate small wireless facilities on non-electric municipal poles. Municipalities are required to recognize small wireless facilities ("SWF") in the ROW as a permitted use in all zones and districts (this is strictly an administrative process).

Bill Summary:

- A small wireless facility consists of:
  an antenna of 6 ft^3 or less;
  ground equipment of 28 ft^3 or less;
  and it is collocated or installed on a utility pole no taller than 50 ft. (potential additional 10ft. for antennae).
- Design/Historic and Underground Districts must allow SWF including utility poles (can have heightened design standards).
- May adopt reasonable, nondiscriminatory design standards.
- May limit new utility poles in ROW that is 60 ft. wide or less and adjacent to residential property.
- May adopt nondiscriminatory police-power-based regulations for management of ROW.
- May deny applications for articulable public safety reasons.
- May require agreement dealing with indemnification, insurance and bonding before ROW work.

Compensation

- Annual ROW Access Rate
  3.5% of gross revenue under Municipal Telecommunications License Tax; or the greater of 3.5% of gross revenue or $250 per small wireless facility.
- Annual Authority Pole Attachment Rate
  $50 per collocated small wireless facility per authority pole.
- Application Fees
  $100 per collocated small wireless facility.
  $250 per utility pole with a small wireless facility.
  $1000 per non-permitted use.
- Other applicable permit fees.

Application Limits

- Consolidated application: up to 25 small wireless facilities of substantially the same type.
- Category One Authority: Population of 65,000 or greater
  Up to 75 small wireless facility (3 consolidated) applications per 30 days.
- Category Two Authority: Population of 64,999 or less.
  Up to 25 small wireless facility (1 consolidated) applications per 30 days.

Time Periods

- Completion: 30 days
- Collocation: 60 days (including completion review)
- New, modified, or replacement utility pole: 105 days (including completion review)
- One additional extension of 10 business days.

- Deemed complete and/or granted if municipality does not meet deadlines.

Practice Tips:
Review your telecommunications ordinance and your fee schedules and amend them as necessary. We did negotiate the ability to create reasonable design standards for this use so review any current design standards that you may have in your current telecommunications ordinance and update accordingly. Remember the law requires the following process to amend a land use ordinance, the Planning Commission reviews and holds one public hearing (duly noticed as per state law) and then recommends to the City Council. The Legislative Body (City Council) approves any additions or amendments to the ordinance at a public meeting (unless your ordinance mandates a hearing). As this takes effect September 1, 2018 we suggest you make this a priority as the time periods in the statute deems an application complete if you don't meet them.

Additional Resources:
There are many states grappling with this new technology and there are many resources to consider. Please remember that the best ordinances are crafted at the local level and with your community's input.

Here is a link to a good summary produced by Denver last year. Please note in Utah we did negotiate the ability to create reasonable design standards.
https://www.denvergov.org/content/dam/denvergov/Portals/730/documents/ROWServices/small-cell-infrastructure-2017.pdf

Here is another resource to give you some ideas produced by the Industry sponsored Small Cell Forum "Making your building 'small cell ready' – the guidelines"
http://www.scf.io/en/documents/214_-_Making_buildings_small_cell_ready.php

Have specific questions on SB 189? Contact ULCT Advisor Roger Tew at **rtew@ulct.org**

#6. HB 259 Moderate Income Housing Amendments (MIH)

Background:
This bill updates the existing requirement for cities to develop a moderate-income housing plan. The provision has been in place for many years. The State Legislature had many conversations about the lack of affordable housing in the State and wanted to send a clear message that this issue is at the forefront of their minds. They passed a bill, HB430, that creates a Commission on Housing Affordability in the Department of Workforce Services to further examine potential solutions to this complex issue. The League has two nominations for appointments on this Commission.

The substantive updates to the MIH plan in HB 259 are the following:

1. Towns remain exempt
2. Provisions were put in place to exempt some municipalities by population. (see below)
3. Municipalities that submitted a findings report of their biennial moderate-income housing review to The Housing and Community Development Division (HCDD) in 2017 will not be required to report until 2019. All other obligated municipalities are to submit a report to HCDD no later than December 31st, 2018.
4. Every two years the legislative body of obligated municipal governments are to:
    - Conduct a thorough review of the municipality's moderate-income housing element and its implementation; and
    - Revise its 5-year moderate-income housing needs estimates; and
    - Report the findings of the biennial review to the Housing and Community Development Division (HCDD) of the Utah Department of Workforce Services and the Association of Government in which the municipality is located.
    - Post the findings report on their website

Bill Summary:

- All cities of 10,000 or more statewide and of 5,000 or more in counties of the third class or larger must address Moderate Income Housing in their general plan by July 2019.
- The report must analyze and publish data on the number of housing units that are at or below 80%, 50%, and 30% of the adjusted median income and the number of units that are subsidized or deed restricted. The Housing and Community Development Division (HCDD) of the Utah Department of Workforce Services can help you in obtaining this data as well as the Gardner Institute at http://gardner.utah.edu/demographics
- The report must also include how a city is using the MIH set aside.

Practice Tips:

Here's a review of what you need to submit. Remember this is a provision that already existed in the statute. You are simply now asked to post the findings on a web site and include the percentage breakdown for housing units as outlined above.

Biennial moderate-income housing review reports are due on December 31st of each year.

Emailed submissions must include the following items as separate attachments:

a. A findings report of the biennial moderate-income housing element review
b. The most current version of the moderate-income housing element of the municipality's general plan
c. A link to the biennial report on the municipality's website

Contact the HCCD staff at biennialreporting@ utah.gov for more information.

Here is a list of exempt areas based on the 2016 Lieutenant Governor's Office classification. Please check for the latest population estimates. We encourage all our municipalities to plan for housing needs in their communities and statewide.

Beaver	Minersville
Beaver	Milford
Beaver	Beaver City
Box Elder	Snowville
Box Elder	Howell
Box Elder	Portage
Box Elder	Deweyville
Box Elder	Plymouth
Box Elder	Fielding
Box Elder	Corinne
Box Elder	Mantua
Box Elder	Bear River
Box Elder	Elwood
Box Elder	Honeyville
Box Elder	Willard
Box Elder	Garland
Box Elder	Perry
Cache	Cornish
Cache	Trenton
Cache	Amalga
Cache	Clarkston
Cache	Newton
Cache	Paradise
Cache	Mendon
Cache	Lewiston
Cache	River Heights
Cache	Millville
Cache	Richmond
Cache	Wellsville
Cache	Hyde Park
Carbon	Scofield
Carbon	East Carbon

Carbon	Wellington
Carbon	Helper
Carbon	Price
Daggett	Dutch John
Daggett	Manila
Duchesne	Tabiona
Duchesne	Altamont
Duchesne	Myton
Duchesne	Duchesne City
Duchesne	Roosevelt
Emery	Clawson
Emery	Emery City
Emery	Elmo
Emery	Cleveland
Emery	Green River
Emery	Orangeville
Emery	Castle Dale
Emery	Ferron
Emery	Huntington
Garfield	Antimony
Garfield	Hatch
Garfield	Cannonville
Garfield	Henrieville
Garfield	Boulder
Garfield	Bryce Canyon
Garfield	Tropic
Garfield	Escalante
Garfield	Panguitch
Grand	Castle Valley
Grand	Moab
Iron	Brian Head
Iron	Kanarraville
Iron	Paragonah
Iron	Parowan
Juab	Eureka
Juab	Rocky Ridge
Juab	Levan
Juab	Mona
Juab	Nephi
Kane	Alton
Kane	Glendale

Kane	Big Water
Kane	Orderville
Kane	Kanab
Millard	Lynndyl
Millard	Leamington
Millard	Meadow
Millard	Scipio
Millard	Holden
Millard	Kanosh
Millard	Oak City
Millard	Hinckley
Millard	Fillmore
Millard	Delta
Morgan	Morgan City
Piute	Kingston
Piute	Junction
Piute	Marysvale
Piute	Circleville
Rich	Woodruff
Rich	Laketown
Rich	Randolph
Rich	Garden City
Salt Lake	Alta
San Juan	Monticello
San Juan	Blanding
Sanpete	Fayette
Sanpete	Sterling
Sanpete	Wales
Sanpete	Mayfield
Sanpete	Spring City
Sanpete	Fountain Green
Sanpete	Fairview
Sanpete	Centerfield
Sanpete	Moroni
Sanpete	Gunnison
Sanpete	Mt. Pleasant
Sanpete	Manti
Sanpete	Ephraim
Sevier	Koosharem
Sevier	Joseph
Sevier	Sigurd

Sevier	Glenwood
Sevier	Central Valley
Sevier	Redmond
Sevier	Annabella
Sevier	Elsinore
Sevier	Aurora
Sevier	Monroe
Sevier	Salina
Sevier	Richfield
Summit	Henefer
Summit	Francis
Summit	Coalville
Summit	Oakley
Summit	Kamas
Tooele	Vernon
Tooele	Rush Valley
Tooele	Stockton
Tooele	Wendover
Uintah	Ballard
Uintah	Naples
Utah	Fairfield
Utah	Cedar Fort
Utah	Goshen
Utah	Genola
Utah	Woodland Hills
Utah	Elk Ridge
Utah	Vineyard
Wasatch	Independence
Wasatch	Interlaken
Wasatch	Wallsburg
Wasatch	Charleston
Wasatch	Hideout
Wasatch	Daniel
Wasatch	Midway
Washington	New Harmony Town
Washington	Rockville
Washington	Springdale
Washington	Virgin
Washington	Apple Valley
Washington	Leeds
Washington	Toquerville

Washington	Enterprise
Washington	Hildale
Washington	La Verkin
Wayne	Torrey
Wayne	Hanksville
Wayne	Lyman
Wayne	Bicknell
Wayne	Loa
Weber	Huntsville
Weber	Uintah
Weber	Marriott-Slaterville

#7. SB 158 – Municipal Business Licensing

Background: This bill further clarifies last year's SB 81 (Local Government Licensing Amendments). SB 81 modified a city or county's authority to license home-based businesses. Post-SB 81, the law no longer allowed cities to license a business for the purpose of revenue. Instead, cities were only permitted to impose fees on businesses to cover the cost of regulation. By doing so, SB 81 required cities to define the offsite impacts of home-based businesses in order to collect a fee for a license. SB 158 does not fundamentally change what SB 81 did last year.

Bill Summary: Cities may still charge business licensing fees for a home-based business if the business creates offsite impacts that materially exceed the primary residential use. Cities may not get around this by charging other types of fees for home-based business. They may also charge an administrative fee for issuing a license to a home-based business owner who requests a license but is otherwise exempt from a fee. The bill also requires municipalities to notify home-based business owners that they may be exempt from licensing fee "in any communication with the owner." This puts the burden on cities to communicate to home-based business owners that they are exempt from the fee.

Practice Tips: Review your home occupation ordinance and the home-based businesses licensed in your city to ensure your city is only charging home-based businesses for the cost of regulation, and that businesses that do not have offsite impacts are not charged a fee.

Some cities do not require home-based businesses that do not have offsite impacts to be licensed. If your city requires every business to be licensed, be aware that you may not be able to charge a fee for each license you issue. However, if you do not require a business to be licensed but that business still requests the city to issue one, you may charge a reasonable administrative fee.

The city should notify the business that they could qualify in their next regularly scheduled correspondence with the home occupation business.

#8. SB 167 – Food Truck Regulation Amendments

Background: This bill further clarifies last year's SB 250, which implemented the Food Truck Licensing and Regulation Act. SB 250 required food truck licensing reciprocity between jurisdictions so long as the food truck met health inspection and fire safety requirements. It also prohibited a city from preventing a food truck from operating within a certain distance of a restaurant, and disallowed cities from requiring background checks on employees. SB 167 was requested by the Libertas Institute based on allegations that some cities are still out of compliance with SB 250, as well as charging astronomical fees for reciprocal licenses and placing excessive burdens on food truck operators by requiring them to submit site plans and other land use application materials before issuing a business license. SB 167 is intended to clarify that cities may not require a food truck operator to go through a land use application process to get a business license.

Bill Summary: Cities and counties may (and should) still require food truck operators to comply with all local land use and zoning regulations. They may (and should) promulgate local laws and regulations that govern the what/where/when of food truck operation. Cities may also still charge a reasonable fee to cover the regulatory cost of issuing a reciprocal license. Be aware that the first version of this legislation completely removed the city's ability to charge ANY fee for reciprocal licenses, and we fought to continue to permit cities to cover their costs. If cities charge fees that are equal to or more than original business licenses, we can expect to see this right removed by legislation next year. However, a city or county may not

- Require a fee for each food truck employee;
- Require the food truck to demonstrate how it will comply with land use or zoning at the time it applies for a business license;
- Prohibit food trucks in a zone where other food establishments are allowed;
- Restrict the number of days per year a truck can operate;
- Require a site plan for each location the food truck operates if they permit operation in the public ROW; or
- Require a site plan for private property where a truck operates less than 10 hours per week.

Practice Tips: If you have an ordinance governing food trucks, review it to ensure that it does not regulate in the areas listed above. If you don't have a food truck ordinance, start working on one. ULCT is working on a "best practices" document that we hope to have ready for distribution in the next few weeks. Also, consider developing a "one-pager" on your local rules and regulations for food trucks and posting it on your website.

Other land use-related bills

HB 361 Billboard Amendments
Summary:
This bill If the billboard owner and the city can't agree to a mutually acceptable location within 180 days of the application to relocate, the owner may relocate the billboard. This bill also requires use of the State eminent domain process for terminating the property right, but now with 180 days to complete the procedural steps under the eminent domain statute (78B-6-5). The municipality has the ability to make a conscience decision to condemn and purchase a billboard.

SB 96 Canal Amendments
Summary: This bill establishes a process for property owners and canal owners to modify water conveyance facilities and establishes an appeal process with the Office Property Rights Ombudsman (OPRO).

SB 191 State Regulation of Oil and Gas
Summary:
This was a Utah Association of Counties (UAC) bill that mandates that local governments can adopt regulations for surface as long as they do not limit, ban, or prohibit oil and gas activity. This bill may be amended in special session this year to address pipelines.

HB 249 Statewide Resource Management Plan (RMP) Adoption
Summary:
This bill adopts statewide RMP and requires county consistency with the RMP. The plan will be on file with the Public Lands Policy Coordinating Office. This bill now requires that to make any changes to the plan all entities must get approval from the PLPCO. It also requires the PLPCO, as funding allows, to monitor the implementation of the statewide resource management plan at the state and local levels and creates a reporting requirement for the PLPCO to the Commission for the Stewardship of Public Lands.

SB 234 Utah Inland Port Authority
Summary:
SB 234 directly impacts Salt Lake City, West Valley City, and Magna Metro Township but has potential precedential ramifications on all local governments. The bill has four problematic provisions. First, the bill creates a new land use standard for appeals of city administrative land use decisions. The Inland Port Authority Board would serve as the land use appeals authority with vague standards that are not consistent with the Land Use Development and Management Act. Second, the new board would control up to 100% of the property tax increment on the property within the authority area. Third, the authority area consists of more than 22,000 acres in the three municipalities without the consent of Salt Lake City. Fourth, the eleven-member board that will govern the authority will have only 3 city representatives, 1 from West Valley and 2 from Salt Lake City despite the vast majority of the acreage being within Salt Lake City, and no designated representative from the Salt Lake City Mayor's office.

HB 462 Homeless Services Amendments

Summary:

HB 462 appropriates $6,600,000 from the state general fund to help pay for the operation and maintenance of homeless shelters that serves 50 or more individuals per night. The original version of the bill would have required cities to contribute $3,300,000 toward the operation and maintenance of homeless shelters in Salt Lake County. The original version of the bill also would have authorized the State of Utah to levy an assessment against every city in the state according to the quantity of low and moderate-income housing available in the city. ULCT vigorously opposed both provisions and the Senate removed those provisions. The bill, similar to HB 259, requires the Division of Workforce Services to do an annual report with an estimate of the quantity of affordable housing units available in each city in the state with a percentage of the available affordable housing and low-income housing available in the city compared to the statewide average.

SB 136 – Transportation Governance Amendments

Summary:

SB 136 authorizes and facilitates state and local funding for transportation (including active transportation), reorganizes the Utah Transit Authority, modernizes the state prioritization criteria, and creates strategic initiatives for transportation funding.

First, SB 136 authorizes counties where transit exists to impose the fourth quarter for transportation (the Proposition 1 quarter from HB 362 in 2015) without voter approval. The bill also authorizes a fifth quarter (technically .20) which a county can impose only after all four other quarters have been imposed that is exclusively for transit. If a county imposes the fourth quarter between today and June 30, 2019, the county keeps the entire quarter center UNTIL June 30, 2019. If the county imposes the quarter center between July 1, 2019 and June 30, 2020, then the fourth quarter formula (.10 cities, .10 transit, .05 counties) applies. If the county does not act by June 30, 2020, then a city in a county where transit is provided may impose the full quarter cent within the city. In that case, 50% would go to cities and 50% would go transit.

In addition, the bill authorizes transportation reinvestment zones which will be a tool for local governments to use to capture the increased property value from transportation investment.

Second, the board of trustees of the Utah Transit Authority will pivot from a 16-member board--of which 11 are appointed by local government--to a 3-member board which counties would recommend and the Governor would appoint.

Transit (including active transportation) would also be eligible for state funding via the Transit Transportation Investment Fund. The details on this will be outlined in the coming months.

Third, SB 136 requires UDOT to create strategic initiatives for state transportation funding that will include local land use and economic development potential. The four State metropolitan planning organization (MPO's) will be involved in that process. During the 2017 interim, several legislators wanted to punish cities for their land use planning. Because of ULCT pushback, SB 136 has an incentive-based approach instead. More details are available on this – just ask League Staff!