

Advisory Opinion #189

Parties: Home Builders Association of Utah, Elk Ridge City

Issued: July 27, 2017

TOPIC CATEGORIES:

Compliance with Land Use Ordinances

The Utah amendments to the International Fire Code, Utah Code § 15A-5-203(1)(a), prohibit a local government from requiring fire sprinklers in all residential structures, except in certain specific circumstances. Thus the City ordinance requiring fire sprinklers in all residential buildings cannot be enforced. However, the City can require fire sprinklers in residential structures that meet the listed statutory circumstances.

DISCLAIMER

The Office of the Property Rights Ombudsman makes every effort to ensure that the legal analysis of each Advisory Opinion is based on a correct application of statutes and cases in existence when the Opinion was prepared. Over time, however, the analysis of an Advisory Opinion may be altered because of statutory changes or new interpretations issued by appellate courts. Readers should be advised that Advisory Opinions provide general guidance and information on legal protections afforded to private property, but an Opinion should not be considered legal advice. Specific questions should be directed to an attorney to be analyzed according to current laws.



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ADVISORY OPINION

Advisory Opinion Requested By: Ross Ford, Home Builders Association of Utah
Local Government Entity: Elk Ridge City
Applicant for Land Use Approval: Various
Type of Property: Residential
Date of this Advisory Opinion: July 27, 2017
Opinion Authored By: Brent N. Bateman
Office of the Property Rights Ombudsman

ISSUE

Can the City of Elk Ridge require fire sprinklers in all residential structures or such are ordinances prohibited by the state fire code?

SUMMARY OF ADVISORY OPINION

The Utah amendments to the International Fire Code prohibit a local government from requiring fire sprinklers in residential structures, except in certain specific circumstances. Thus the Elk Ridge ordinance requiring fire sprinklers in *all* residential buildings cannot be enforced. However, Elk Ridge can require fire sprinklers in residential structures that meet the listed statutory circumstances.

REVIEW

A Request for an Advisory Opinion may be filed at any time prior to the rendering of a final decision by a local land use appeal authority under the provisions of UTAH CODE § 13-43-205. An advisory opinion is meant to provide an early review, before any duty to exhaust

administrative remedies, of significant land use questions so that those involved in a land use application or other specific land use disputes can have an independent review of an issue. It is hoped that such a review can help the parties avoid litigation, resolve differences in a fair and neutral forum, and understand the relevant law. The decision is not binding, but, as explained at the end of this opinion, may have some effect on the long-term cost of resolving such issues in the courts. A Request for an Advisory Opinion was received from Mr. Ross Ford on May 12, 2017. A copy of that request was sent via certified mail to Mayor Dennis Dunn, Elk Ridge City, 80 East Park Dr., Elk Ridge, Utah 84651.

EVIDENCE

The Ombudsman's Office reviewed the following relevant documents and information prior to completing this Advisory Opinion:

1. Request for an Advisory Opinion submitted by Mr. Ross Ford, on behalf of the Home Builders Association of Utah, on May 12, 2017.
2. The Utah Code and Elk Ridge City Ordinances, as they appear online.

BACKGROUND

Elk Ridge Utah has adopted an ordinance, section 10-12-38, requiring the installation of fire sprinkler systems in all new residential construction. The Home Builders Association of Utah (HBA), a trade association representing home builders and associated industries, has requested this advisory opinion. The HBA challenges whether Elk Ridge's sprinkler ordinance complies with State law. The HBA argues that under recent changes in state law, cities are not permitted to require fire sprinklers in structures where they are not required under the state fire code. According to the HBA, this local ordinance requiring fire sprinklers in all residential structures is unenforceable. Elk Ridge City did not provide a written response.

ANALYSIS

The State of Utah has granted to local governments the authority to create and enforce land use and building standards within their jurisdictions

- (2) To accomplish the purposes of this chapter, municipalities may enact all ordinances, resolutions, and rules and may enter into other forms of land use controls and development agreements that they consider necessary or appropriate for the use and development of land within the municipality, including ordinances, resolutions, rules, restrictive covenants, easements, and development agreements governing uses, density, open spaces, structures, buildings, energy efficiency, light and air, air quality, transportation and public or alternative transportation, infrastructure, street and building orientation and width

requirements, public facilities, fundamental fairness in land use regulation, considerations of surrounding land uses and the balance of the foregoing purposes with a landowner's private property interests, height and location of vegetation, trees, and landscaping, unless expressly prohibited by law.

UTAH CODE § 10-9a-102(2). That authority, based in the interest of the public health, safety, and welfare, and promoting the standards of the community, is broad and subject to very deferential discretion. However, even though the discretion of the local government is great, it has a limit. Local authority to enact these laws only exists “unless expressly prohibited by law.” *Id.* Where the law expressly prohibits the local government’s action, the action will be invalid.

The Elk Ridge City has an ordinance that requires the installation of fire sprinkler systems in all new residential construction:

Fire sprinkler systems are required to be installed in all new residential development serviced by the Elk Ridge City and Gooseneck Water Company water systems. This requirement is for new construction of any heated structure or construction that constitutes more than fifty percent (50%) expansion of any dwelling unit and shall include any attached garage. The fire sprinkler system shall comply with the fire code and related regulations and the National Fire Protection Association article 13D standards adopted by the city. Sprinklers shall be provided with an exterior inspector's test port that complies with the following specifications or other material approved by the fire chief: a wall hydrant that is a Woodford model 65 (exposed type) or B65.

Elk Ridge Ordinance § 10-12-38. This ordinance appears to have been in place since 2008. Elk Ridge’s recent enforcement of this ordinance has prompted this Advisory Opinion.

This blanket ordinance, requiring fire sprinkling systems on all new construction, is expressly prohibited by Utah law. Residential construction in Utah is governed state-wide by the *International Residential Code*, see UTAH CODE § 15A-2-103, and the *International Fire Code*, UTAH CODE § 15A-1-403. These codes have been adopted by the legislature and apply to construction activities throughout the state. Although these are international codes with specific standards, they have the force of law in Utah.

The Utah legislature regularly adopts amendments to these codes specific to Utah policies and reflective of Utah needs. These amendments are also adopted into state law and act as modifications to the international code, and apply generally throughout the state. UTAH CODE § 15A-5-201.

One Utah amendment to the International Fire Code is crucial to this Advisory Opinion. It applies to fire sprinkler systems in residential construction. This amendment, found in UTAH CODE § 15A-5-203(1)(a), and legislatively amended most recently in 2016, sets forth the conditions under which Utah Governments can require fire sprinklers in residential construction:

- (a) In IFC, Chapter 5, a new Section 501.5, Access grade and fire flow, is added as follows: "An authority having jurisdiction over a structure built in accordance with the requirements of the International Residential Code as adopted in the State Construction Code, may require an automatic fire sprinkler system for the structure only by ordinance and only if any of the following conditions exist:
- (i) the structure:
 - (A) is located in an urban-wildland interface area as provided in the Utah Wildland Urban Interface Code adopted as a construction code under the State Construction Code; and
 - (B) does not meet the requirements described in Utah Code, Subsection 65A-8-203(4)(a) and Utah Administrative Code, R652-122-200, Minimum Standards for Wildland Fire Ordinance;
 - (ii) the structure is in an area where a public water distribution system with fire hydrants does not exist as required in Utah Administrative Code, R309-550-5, Water Main Design;
 - (iii) the only fire apparatus access road has a grade greater than 10% for more than 500 continual feet;
 - (iv) the total floor area of all floor levels within the exterior walls of the dwelling unit exceeds 10,000 square feet; or
 - (v) the total floor area of all floor levels within the exterior walls of the dwelling unit is double the average of the total floor area of all floor levels of unsprinkled homes in the subdivision that are no larger than 10,000 square feet.

UTAH CODE § 15A-5-203(1)(a). This section expressly prohibits a blanket requirement of sprinklers in all residential construction by stating that the local authority “may require an automatic fire sprinkler system for the structure *only* by ordinance and *only* if any of the following conditions exist.” *Id.*, (emphasis added). By the plain language of this statute, a local authority may require sprinklers in new residential construction only if one of the listed conditions exists. A blanket requirement for fire sprinklers in all new residential construction, without reference to any of the listed conditions, is thus expressly prohibited by state law.

Accordingly, Elk Ridge Ordinance § 10-12-38 is expressly prohibited by Utah law. Nevertheless, it is important to note that Elk Ridge City may require fire sprinkler systems in some new residential construction in compliance with this statute. The statute does permit a local government to require fire sprinklers in new residential construction if the listed conditions are met. Nothing has been provided to so indicate. Nevertheless, the entire City of Elk Ridge may be within an urban-wildland interface area, as stated in subsection (A)(i). If so, then Elk Ridge may require fire sprinkler systems in all new residential construction, in compliance with the state law. Moreover, individual residences under construction may be within areas where a public water distribution system with fire hydrants does not exist, or where road grades are greater than 10% for 500 feet as set forth in the statute. In such cases, the fire sprinkler requirement could be enforced. In sum, this Office does not find that Elk Ridge cannot require fire sprinkler systems.

Rather, we find that Elk Ridge City must follow the state code, which expressly prohibits a blanket requirement of fire sprinklers in all new residential construction.

CONCLUSION

The plain language of UTAH CODE § 15A-5-203(1)(a) states that local authorities may require fire sprinkler systems in residential construction only where certain conditions are met. Thus, Elk Ridge City cannot enforce its ordinance requiring fire sprinkler systems in all new residential construction, without reference to the listed conditions.

Brent N. Bateman, Lead Attorney
Office of the Property Rights Ombudsman

NOTE:

This is an advisory opinion as defined in § 13-43-205 of the Utah Code. It does not constitute legal advice, and is not to be construed as reflecting the opinions or policy of the State of Utah or the Department of Commerce. The opinions expressed are arrived at based on a summary review of the factual situation involved in this specific matter, and may or may not reflect the opinion that might be expressed in another matter where the facts and circumstances are different or where the relevant law may have changed.

While the author is an attorney and has prepared this opinion in light of his understanding of the relevant law, he does not represent anyone involved in this matter. Anyone with an interest in these issues who must protect that interest should seek the advice of his or her own legal counsel and not rely on this document as a definitive statement of how to protect or advance his interest.

An advisory opinion issued by the Office of the Property Rights Ombudsman is not binding on any party to a dispute involving land use law. If the same issue that is the subject of an advisory opinion is listed as a cause of action in litigation, and that cause of action is litigated on the same facts and circumstances and is resolved consistent with the advisory opinion, the substantially prevailing party on that cause of action may collect reasonable attorney fees and court costs pertaining to the development of that cause of action from the date of the delivery of the advisory opinion to the date of the court's resolution.

Evidence of a review by the Office of the Property Rights Ombudsman and the opinions, writings, findings, and determinations of the Office of the Property Rights Ombudsman are not admissible as evidence in a judicial action, except in small claims court, a judicial review of arbitration, or in determining costs and legal fees as explained above.

The Advisory Opinion process is an alternative dispute resolution process. Advisory Opinions are intended to assist parties to resolve disputes and avoid litigation. All of the statutory procedures in place for Advisory Opinions, as well as the internal policies of the Office of the Property Rights Ombudsman, are designed to maximize the opportunity to resolve disputes in a friendly and mutually beneficial manner. The Advisory Opinion attorney fees provisions, found in UTAH CODE § 13-43-206, are also designed to encourage dispute resolution. By statute they are awarded in very narrow circumstances, and even if those circumstances are met, the judge maintains discretion regarding whether to award them.

MAILING CERTIFICATE

Section 13-43-206(10)(b) of the Utah Code requires delivery of the attached advisory opinion to the government entity involved in this matter in a manner that complies with UTAH CODE § 63-30d-401 (Notices Filed Under the Governmental Immunity Act).

These provisions of state code require that the advisory opinion be delivered to the agent designated by the governmental entity to receive notices on behalf of the governmental entity in the Governmental Immunity Act database maintained by the Utah State Department of Commerce, Division of Corporations and Commercial Code, and to the address shown is as designated in that database.

The person and address designated in the Governmental Immunity Act database is as follows:

Mayor Dennis Dunn
City of Elk Ridge
80 East Park Dr.
Elk Ridge, Utah 84651

On this _____ Day of July, 2017, I caused the attached Advisory Opinion to be delivered to the governmental office by delivering the same to the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the person shown above.

Office of the Property Rights Ombudsman