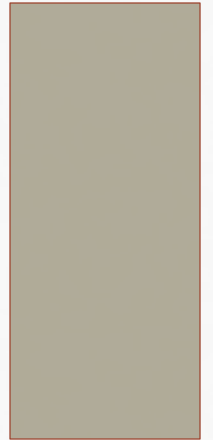


# LEGISLATION / UPDATE

CITY ATTORNEY



# SB 174 – LOSS OF LOCAL CONTROL



# INTRODUCTION

1. Mike Kohler sat next to the sponsor of this bill and listened to him speak repeatedly about the fact that local municipalities are the problem – that they stand in the way of development and affordable housing – and that we just need to get them out of the way so Utah can meet its dire need for additional housing.
2. Lobbyist issued a poster with a picture of a home with a chain wrapped around it with a saying to the effect “Free us from local control”
3. The Utah League of Cities and Towns rolled over and did nothing to stop this
4. As you will see, this bill guts local control, removes the City Council from ALL development applications dealing with family homes, and places deadlines that are obnoxious and egregious, without any consideration for the difference between a massive resort and a two-lot subdivision.



## SECTION 10-9a-604.1 – Process for Subdivision Review and Approval

1. Designates an “administrative land use authority” and expressly prohibits a “member of a municipal legislative body” from serving on the administrative land use authority.
2. Applies only to: subdivision applications for single-family and two-family dwellings or townhomes. (would apply to resorts and mixed use applications – only applications that it would not apply to is purely commercial)
3. Must designate the “administrative land use authority” for preliminary review
4. City may designate a different body on applications that do not require a plat (can be up to 10 lots) but we require plats on everything so inapplicable



## 10-9a-604.1 cont.

### 1. NEW PROCESS:

#### a. Pre-application Meeting

b. City must schedule and hold a review of the concept plan within 15 days of request

c. At the meeting City must give applicant:

- i. Copies of applicable land use regulations
- ii. Complete list of standards required for the project
- iii. Preliminary and final application checklist
- iv. Feedback on concept plan

1. Seems hard to do this when City has not seen the proposal before the meeting

#### d. Preliminary Subdivision Application

- i. May be reviewed by staff or administrative land use authority
- ii. May only hold one public hearing
- iii. If the application complies with code it must be approved

#### e. Final Subdivision Application

- i. May be concurrent with preliminary approval
- ii. May be done by the “Municipality” but may not require planning commission or city council approval (so basically staff approval)
- iii. If application complies with the code it shall be approved



## **SECTION 10-9a-604.2 – Review of Subdivision Land Use Applications and Subdivision Improvement Plans**

### **1. Step 1: File a complete preliminary subdivision land use application**

- a. City must publish list of what is necessary for a complete preliminary subdivision application, including:
  - i. Application
  - ii. Owner's affidavit
  - iii. Electronic copy of all plans in pdf format
  - iv. Preliminary subdivision drawings
  - v. Breakdown of fees due upon approval

### **2. Step 2: Within 15 days City must complete initial review**

- a. City may require:
  - i. Additional information to ensure compliance with ordinances and codes
  - ii. Modifications to plans that do not comply with zoning code
    1. Request for additional information must:
      - a. Be specific and cite to ordinances, standards, specs, and be logged in an index of requested modifications or additions
      - b. Is not explicit but this appears to be the only chance you get at listing problems with the plat or plans



## 10-9a-604.2 cont.

- a. Applicant must respond within 20 days with:
  - i. Written explanation to comments
  - ii. Citations to standards it does not agree with
  - iii. If they fail to respond to a comment the review cycle is not complete
  
- b. City may only conduct 4 review cycles (and must respond within 15 days of submission on each cycle)
  - i. If applicant does not submit revised plans within 20 days on any cycle the City will have 20 days to respond and not just 15
  - ii. City may respond to final review cycle in three ways:
    1. Approval
    2. If City does not respond to final review cycle within 20 days applicant may request appeal panel to be held within 10 days on issues involving approval of plans
    3. If denied the City must issue a written administrative decision within 10 days that includes the appeals process



## 10-9a-604.2 cont.

1. Items not raised in the review cycles are deemed waived (except for those items that protect public health and safety or involve Federal law)
  
2. Step 3: File application for Final Subdivision Approval
  - a. City must publish requirements and application for Final Subdivision Approval
  
  - b. Note above that final approval cannot be required by either the Planning Commission or City Council (meaning staff only)





# CONCLUSION

Completely rewrites Section 16 of Midway City Code.

Removes City Council **ENTIRELY** from land use approval process.

Places preliminary approval solely in the hands of the Planning Commission (non-elected officials) and final approval in the hands of staff.

**NO LANDUSE APPROVALS FOR SUBDIVISIONS THAT INCLUDE FAMILY DWELLINGS WILL COME TO CITY COUNCIL!**

Regardless of whether it is a 2000 unit resort or a two lot subdivision, you get one public hearing and that's it.

Will require complete rewrite of 16.16.130 through 16.16.220.



# CONCLUSION

Guts the Master Plan Process because the new deadlines apply to any application that deals with one or two family dwellings or townhomes.

You may be able to go through Master Plan but it will have to be concurrent with or part of an application for a regular subdivision.

Regardless of whether it is a 2000 unit resort or a two lot subdivision, you get one public hearing and that's it.

Will require complete rewrite of 16.16.130 through 16.16.220.



# SUGGESTIONS

Zoning is all the City Council has left.

Only choice is to review zoning code and make sure the code is specific and clear, and not open for interpretation.



# CONSTITUTIONAL CHALLENGES

Article VI, Section 22 [Reading of bills -- Bill to contain only one subject -- Bills passed by majority.] Every bill shall be read by title three separate times in each house except in cases where two-thirds of the house where such bill is pending suspend this requirement. Except general appropriation bills and bills for the codification and general revision of laws, **no bill shall be passed containing more than one subject**, which shall be clearly expressed in its title. The vote upon the final passage of all bills shall be by yeas and nays and entered upon the respective journals of the house in which the vote occurs. No bill or joint resolution shall be passed except with the assent of the majority of all the members elected to each house of the Legislature.

**Bill contains provisions about subdivision approval, IADU's, lot line adjustments, and moderate income housing.**



**Article XI, Section 5 [Cities and towns not to be created by special laws -- Legislature to provide for the incorporation, organization, dissolution, and classification of cities and towns -- Charter cities.]**

Each city forming its charter under this section shall have, and is hereby granted, the authority to exercise all powers relating to municipal affairs, and to adopt and enforce within its limits, local police, sanitary and similar regulations not in conflict with the general law, and no enumeration of powers in this constitution or any law shall be deemed to limit or restrict the general grant of authority hereby conferred; but this grant of authority shall not include the power to regulate public utilities, not municipally owned, if any such regulation of public utilities is provided for by general law, nor be deemed to limit or restrict the power of the Legislature in matters relating to State affairs, to enact general laws applicable alike to all cities of the State.



IS APPROVAL PROCESS A MATTER RELATING TO STATE AFFAIRS? IS CLAIM THIS ADDRESSES AFFORDABLE HOUSING A STATE AFFAIR?

## **SECTION 10-9a-608 – Subdivision Amendments**

- When dealing with lot line adjustments between platted lots it removes the language “exchange of title” and replaces it with lot line adjustment
- Note it still refers to an exchange of title in 5(b) establishing a lot line adjustment is an exchange of title, but then refers to “lot line adjustment” instead of exchange of title thereafter



## **SECTION 10-9a-408 – Moderate Income Housing Reports**

1. Specified Municipality: City of the fifth class (Midway) in a County of the Third Class (Wasatch)
2. Note that we are at 6003 in the last census and the State Website does not indicate we need to file and does not give us the option to file, but technically we should
3. Must file a Moderate Income Housing Report annually
4. Must list three strategies and an implementation plan



## 10-9a-408 cont.

1. Get fined \$250 per day if you fail to file and \$500 per day in 2025
2. Lose funding from the Department of Transportation if you fail to file or comply
3. Mike states we have filed this for years. This is the first time they threaten to fine us for failure to file, but don't include us on the list of Cities that need to file.
4. Appears to give broad discretion to the State to determine if we are actually implementing our plans





## **SECTION 10-9a-530 – Internal Accessory Dwelling Units**

1. Adds garages to ‘primary dwelling’ if they are connected by a common wall
2. Cannot impose greater or higher architectural requirements than those imposed on single family units
3. Cannot require additional parking if the Municipality requires four off-street parking spaces as part of a regular approval
4. May not prohibit newly constructed IADU’s that have final plat approval after October 1, 2021 and comply with applicable land use regulations (this is confusing)



## 10-9a-604.2 cont.

### 1. Step 3: File application for Final Subdivision Approval

- a. City must publish requirements and application for Final Subdivision Approval
- b. Note above that final approval cannot be required by either the Planning Commission or City Council (meaning staff only)

