

# Memo



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Date: October 8, 2024  
To: Midway City Planning Commission  
From: Planning Staff  
Re: Proposed Midway City Code Revisions pursuant to SB 174 (Land Use) 2023

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Effective May 3, 2023, the Utah Legislature passed SB 174, Local Land Use and Development Revisions.

The bill:

- ▶ amends the penalties for noncompliance with the requirements applicable to a political subdivision's moderate income housing report;
- ▶ defines the circumstances under which a garage may be included in the definition of an internal accessory dwelling unit;
- ▶ amends a political subdivision's authority with respect to restrictions and requirements for internal accessory dwelling units;
- ▶ enacts a new process for subdivision review and approval; and
- ▶ makes technical changes.

Compliance Date: December 31, 2024, for Midway and Wasatch County. (February 1, 2024, for Heber)

## **U.C.A. 10-9a-604.1. Process for subdivision review and approval.**

One of the most significant changes removes the City Council from the subdivision review process for single-family dwellings, two family dwellings, and townhomes. Under Subsection 3(b), Midway City must “designate a single administrative land use authority for the review of preliminary applications to subdivide land” for these categories of subdivision, and that land use authority may not be the City Council or any member of City Council. The land use authority may consist of municipal staff or the Planning Commission (limited to preliminary approval).

The quick turnaround times for reviews incorporated under the new law makes it difficult for municipalities like Midway to utilize its Planning Commission as the land use authority.

For example, U.C.A. 10-9a-604.2 (3)(a), “Review of subdivision land use applications and subdivision improvement plans”, provides:

*... No later than 15 business days after the day on which an applicant submits a complete preliminary subdivision land use application for a residential subdivision for single-family dwellings, two-family dwellings, or townhomes, the municipality shall complete the initial review of the application, including subdivision improvement plans.*

With this turnaround time for reviews, it would be difficult, if not impossible, for the Planning Commission, which meets once a month, to meet the strict timeframes. Even if the Planning Commission increased its meetings to twice a month, it may be challenging, depending upon when an application is filed, to meet the timeframes. Since the Planning Commission is limited to preliminary review, not final review, it would be impractical for the City to name the Planning Commission as the land use authority.

Accordingly, the code text amendments proposed by staff to comply with the legislation have staff acting as the land use authority, with Planning Commission involvement for the public meeting.

Staff has reviewed the current Midway Code and identified and proposed amended language for those code provisions which had the City Council as the reviewing authority on subdivisions for single family homes, two family homes, or townhomes.

City Council will remain the final authority for commercial and mixed-use subdivisions as well as legislative actions. The City Council also will remain the reviewing authority for any appeals from staff decisions, except those relating to engineering standards as set forth below. We left the City Council the review authority for extensions of development agreements as well.

### **Summary of New Procedures:**

Under the new law, preliminary and final plat review are the only “steps” allowed within the new subdivision process. The steps are:

1. Initial review of preliminary plat. To be completed within 15 business days of receiving a Complete Application.
2. Review of final plat. To be completed within 20 days of receiving the complete application.
3. Capped Review Cycle. Maximum of four review cycles permitted for final review only. Between preliminary approval and final approval, only four revisions are permitted.
4. Agreed upon changes. The Applicant must respond to required changes. If he/she disagrees with those issues, those must be committed in writing.

**Summary of New Appeals Procedure for issues relating to Public Improvements/Engineering Standards:**

As set forth in the UCLT materials attached,

SB 174 creates a new appeal process for disputes relating to public improvement or engineering standards.

After the four review cycles have been exhausted and 20 days have passed, the municipality shall assemble a three-person panel meeting within 10 days of receiving a request from the applicant. The panel of experts for the appeal authority includes: one licensed engineer designated by the municipality, one licensed engineer designated by the land use applicant, and one licensed engineer agreed upon and designated by the two designated engineers

Members appointed to the panel may not have an interest in the application in question. The applicant must pay 50% of the total cost of the panel and the municipality's published appeal fee. The municipality pays the other 50%. The panel's decision is final, unless the municipality or applicant petition for district court review within 30 days after the final written decision is issued.

**Proposed Code Text Amendments to City of Midway Code:**

- A. Based upon the above, Staff is recommending that the current Code be amended to add the following new code sections governing appeals:
  - 1. 16.16.340 Appeals in Disputes involving public improvements/engineering standards (in PUD and Standard Subdivisions);
  - 2. 16.17.220 Appeals in Disputes involving public improvements/engineering standards (in Small Subdivisions);
  - 3. 16.18.330 Appeals in Disputes involving public improvements/engineering standards (in Rural Preservation Subdivisions);
  - 4. 16.30.380 Appeals in Disputes involving public improvements/engineering standards (in Density Reduction Subdivisions).

Each of the new proposed sections shall include the following text: "The appeal process and procedures for disputes regarding public improvements/engineering standards will be in accordance with Utah State Law".

- B. The changes identified in section (A) above, as well as the additional Code text amendments identified by staff as required by SB 174 to remove the City Council from the review process for subdivisions involving single-family dwellings, two-family dwellings, and townhomes, are attached for consideration and review.

Also attached are a fact sheet and summary of frequently asked questions assembled by the Utah League of Cities and Towns.

**PROPOSED FINDINGS:**

- The proposed code text amendments comply with the State mandates codified under SB 174 (2023)

**POSSIBLE ACTIONS:**

1. Approval. This action can be taken if the City Council finds that the proposed language is an acceptable amendment to the City’s Municipal Code.
  - a. Accept staff report
  - b. List accepted findings
  
2. Continuance. This action can be taken if the City Council finds that there are unresolved issues.
  - a. Accept staff report
    - i. List accepted findings
    - ii. Reasons for continuance
      1. Unresolved issues that must be addressed
  - b. Date when the item will be heard again
  
3. Denial. This action can be taken if the City Council finds that the proposed language is not an acceptable amendment to the City’s Municipal Code.
  - a. Accept staff report
  - b. List accepted findings
  - c. Reasons for denial

### **16.07.030 Conditional Uses**

1. Public buildings, primary and secondary schools, churches, but not temporary revival tents or buildings.  
(2011-01, Sub-section Amended, eff. 2/16/2011)
- ~~2. Planned Unit Developments.~~

### **16.08.030 Conditional Uses**

1. Public buildings, primary and secondary schools, churches, but not temporary revival tents or buildings.  
(2011-01, Sub-section Amended, eff. 2/16/2011)
- ~~2. Planned Unit Developments.~~

### **16.09.030 Conditional Uses**

1. Public buildings, primary and secondary schools, churches, but not temporary revival tents or buildings.  
(2011-01, Sub-section Amended, eff. 2/16/2011)
- ~~2. Planned Unit Developments.~~

### **16.10.030 Conditional Uses**

1. Public buildings, primary and secondary schools, churches, but not temporary revival tents or buildings.  
(2011-01, Sub-section Amended, eff. 2/16/2011)
- ~~2. Planned Unit Developments.~~

### **16.11.030 Conditional Uses**

1. Public buildings, primary and secondary schools, churches, but not temporary revival tents or buildings.  
(2011-01, Sub-section Amended, eff. 2/16/2011)
- ~~2. Planned Unit Developments.~~

### **16.12.030 Conditional Uses**

1. Public buildings, primary and secondary schools, and churches.  
(2011-01, Sub-section Amended, eff. 2/16/2011)
2. Hobby breeders:
  1. When located on a lot of at least 1.5 acres.
  2. Has been inspected by the City and the Animal Control Officer and found to be in compliance with other applicable City ordinances.
3. Kennels or Catteries:
  1. When located on a lot or property that is greater than 1.5 acres.
  2. Has been inspected by the City and the Animal Control Officer and found to be in compliance with other applicable City ordinances.
4. Day-care nurseries.
5. Rest homes.

6. Public utility facilities and buildings.
7. Golf courses and golf clubhouses (private and public).
8. Cemeteries.
9. Plant nurseries.

~~10. Planned unit developments.~~

#### **16.13.240 Trails**

All large-scale developments shall connect any trails shown on the City Trails Master Plan for the area. ~~A recommendation from the Midway City Trails Advisory Committee to the Planning Commission and City Council shall be required before final approval is granted.~~

#### **16.14.040 Sensitive Lands Identification And Review Procedure**

For all types of sensitive lands governed by this Chapter, the following general method and outline shall be employed: Initial baseline information and a sensitive lands checklist shall be provided by the City, along with information available from other public review agencies, to the extent that they have been previously identified. These resource guidelines, however, are only minimum guidelines, and are not considered all inclusive. It is not expected that these initial inventories, maps or regulations will comprehensively define all of the possible sensitive lands' considerations for the City. Individual applicant analysis and review are an integral part of the process of confirming the applicability of sensitive lands herein identified to each project, and to further define sensitive areas not heretofore identified, but which conform to the definitions, purpose and intent of this Chapter. Therefore, for every development proposal or annexation brought before the City, the owner, developer or proponent shall, as part of the application for Preliminary Approval, evaluate and return the sensitive lands analysis checklist, along with supporting data for each section of the checklist concerning its applicability to the property. This completed checklist is to facilitate a review of the sensitive lands by the City Planning Staff, ~~Planning Commission, and City Council~~. The checklist is by no means comprehensive but is an initial guideline for the benefit of both the City and the applicant. Upon review, the City may require further and more comprehensive analysis of any of the sections. Analysis of each of the types of sensitive lands governed by this Chapter, and the applicable requirements contained herein, may be required to be conducted by professionally licensed engineers or the appropriate public review agency, or firms sanctioned by such agencies, at the expense of the owner or developer.

#### **16.14.060 Hillside, Slopes, And Natural Grade**

H. Retaining Walls. Retaining walls are discouraged, and the use of blended natural contours is encouraged. However, if it can be demonstrated by the applicant to the satisfaction of the Planning Staff, ~~the Planning Commission, and the City Council~~ that there is no other alternative, then a retaining wall may be constructed in order to reduce the impact of cut banks and fill slopes of more than 6 vertical feet. Such retaining walls must be made of natural stone and blend into the colors and contours of the hillside.

I.

2. Criteria for Streets and Driveways Traversing Steep Slopes. All roads and driveways in hillside areas must receive full review and approval from the City Engineer and Planning Staff, ~~and final approval from the City Council~~. Sensitivity to the land forms, erosion, plant life, wildlife and view shed are key considerations. Streets, roads, private access roads, driveways, and other vehicular routes shall not be allowed to traverse slopes between 25 percent and 50 percent unless specifically authorized and approved

~~by the City Engineer and Planning Staff by the City Council upon recommendation from the Planning Commission.~~ Any drive so authorized shall meet the following criteria:

J. Landslide Considerations. It is the intent of the City that no construction shall occur in areas susceptible to landslides, nor shall any construction or disturbance create an area more susceptible to erosion or landslides or that will destabilize a pre-existing landslide. Areas with potential for landslides may be identified on City maps. The applicant is responsible to search for, perform studies that will identify, and disclose any information that is available to identify areas of instability. For all areas identified on City materials as potential landslide areas, a slope stability analysis must be performed by a licensed geotechnical engineer before development is approved on those sites. The applicant, and Planning and Engineering staff, ~~the Planning Commission, and City Council~~ must then use this information to guide the development of the property.

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3. Architectural Review. The selections of materials, colors and lighting shall be reviewed and a written recommendation to the ~~City Council~~ Planning Director shall be submitted by the City's Vision Architectural Committee.

#### **16.14.070 Ridgelines And Benches**

A. Purpose and Intent. Within the corporate limits of the City of Midway there are many significant land forms, including hills and mountains with distinct ridgelines and benches, at higher elevations than the surrounding flat lands. These topographical features constitute a unique natural resource meriting protection and preservation. Construction of structures in locations on these land forms, which are visible from many areas of the City and County, degrades this natural heritage. The regulations adopted by this Section place restrictions on the siting of any development in visually significant areas. ~~These regulations are promulgated and applied as a zoning overlay district as a legislative exercise by the City Council of the police powers of the City.~~ These regulations apply uniformly to all zoned development encompassing land forms with visually sensitive areas.

C. Ridgeline Building Restrictions. Development Prohibited. No development, as defined in this Chapter, shall be allowed to be located either on or across any ridgeline or skyline, as viewed from any single Community Viewing Station. Anyone desiring to build a structure or any other form of development within a Ridgeline/Skyline protection area, as delineated on the official map, shall submit the proposed building to ~~the Planning Commission for a recommendation and the City Council~~ Planning Staff for approval using the following GIS and field analysis: The highest point of any building or structure, whether the building or structure is on the near or far side of the subject hill, including roof lines, chimneys, steeples, parapets, and so forth, shall not be higher than an imaginary line drawn from six feet off the ground at any single Community Viewing Station viewing platform point to the ridgeline/skyline behind or in front of the proposed structure. An initial prescreening analysis shall be performed by the applicant by suggested methods such as "topography line of sight" graphing from each viewing platform to the top of the proposed structure (using 2-foot or better resolution), through visual analysis from each viewing platform using raised balloons, laser analysis, GIS analysis, or any other method of pre-screening analysis found acceptable to the City Planner and Engineer in order to indicate that the proposed structure will not obviously breach the ridgeline. This initial analysis is for pre-screening purposes only, prior to submittal of official GIS analysis, and is performed so as not to create undue burden on the official GIS system. For those structures that do not obviously breach the ridgeline from any one of the viewing platforms on this pre-screening analysis, the proposal shall be submitted for final analysis to the official City GIS administrator for computer-generated finite element analysis. The results of this GIS finite

element analysis must show that none of the proposed structures will violate the ridgeline ordinance from any of the viewing platforms. This analysis and result must be submitted as a condition of approval. All costs of analysis by the City shall be borne by the applicant.

#### **16.14.100 Spring And Well Protection Zones**

1. Policy. Midway City will cooperate to protect areas within the Source Protection Area of a public drinking water source, as defined on the Midway City Spring and Well Protection Zone Map, or as such zones are defined by the Utah State Division of Drinking Water, from concentrated sources of pollution.
2. Procedure. All development affecting properties within these areas must be reviewed by the Wasatch County Health Department, City Engineer, and the Midway City Public Works Department, and also may be reviewed by others who have a property interest in the water source. The applicant shall prepare a request considering this information and other material relevant to the use of property within Source Protection Areas. ~~The above entities will coordinate with the Planning Staff shall review this request and prepare a recommendation using this information and public health principles in all reviews and any approval of the request. The Planning Commission and City Council must consider the recommendations of City Staff and the Health Department before development can be approved in these areas.~~

#### **16.14.110 Trees And Vegetation**

A. Existing Trees and Vegetation. Every effort to save all full size existing trees on a property proposed for development shall be made by the developer. Existing trees shall not be cut unless absolutely required for placement of structures or infrastructure or for public safety purposes. All existing trees, regardless of species, over five inches in diameter at breast height (DBH) in caliper, along with tree types and tree locations, shall be shown and submitted to ~~the Planning Commission and City Council~~ Planning Staff along with the landscape planting plan. In areas determined by the Fire Marshal to be highly susceptible to fire hazards, vegetation up to 30 feet from the perimeter of a structure shall be selectively pruned and thinned, but not clear cut, for fire protection purposes.

#### **16.14.130 Wildlife Habitat Areas**

B. Standards. All development and developments subject to this Chapter, to the maximum extent possible, ~~as judged and recommended by the Planning Commission and approved by the City Council,~~ shall incorporate the following principles and procedures when locating site elements in relation to wildlife habitat:

1. Applicable Areas. This policy shall apply to all Critical Habitat Areas as defined by the City map based on information from the Utah Division of Wildlife Resources and the Utah Sensitive Species List and other creditable and documented sources. Critical Areas may also include other areas of important or critical habitat as determined by on-the-ground survey(s) conducted by the City wildlife biologist(s) and verified by a written report submitted to ~~the Planning Commission and City Council~~ Planning Staff.

D. Procedures. The following procedures shall apply when applications are made in or adjacent to critical or important wildlife habitats:



1. Biological Review. Site development applications are subject to biological review and recommendations. Based on the standards contained in this section, the Planning Department shall make a determination as to whether a biological review is necessary for a given application. Review shall be performed by a qualified wildlife biologist retained by the City. The cost of the review and report shall be borne by the applicant. If applicants desire, they may also retain their own qualified biologist separately to prepare an additional report, which shall be provided to the Planning Department. ~~Comments from the above review(s) shall be incorporated into the staff report or in some other way transmitted in writing to the Planning Commission and City Council prior to preliminary action on the submitted development application. The Planning Commission and City Council Planning Staff~~ shall consider and decide any disputes contained in different reviews submitted in applying the standards contained in this Chapter.
2. Special Considerations for Wildlife. ~~The Planning Director Staff, Planning Commission, and City Council~~ shall follow the Purpose and Policy which introduces this Section to the extent possible and shall give special consideration to important wildlife habitats as identified on the City map and overlays and to habitats identified during a biological review to be of unique or critical value. ~~Upon recommendation from the Planning Commission, the City Council shall require that modifications or special conditions, as recommended to mitigate impacts on critical wildlife habitat, be considered and incorporated into development plans.~~
3. Denial Based on Significant Adverse Impacts. The ~~City Council, upon recommendation from the Planning Commission, Planning Staff~~ may deny a development proposal if it finds that the proposed development will have significant adverse impacts on critical wildlife habitat for recognized endangered species that cannot be adequately mitigated.
4. Definition of Significant Adverse Impact. For the purposes of this Chapter, “significant adverse impact” shall mean the elimination, reduction, and/or fragmentation of wildlife habitat to the point that the viability of an individual species and the diversity of wildlife species occurring within the boundaries of Midway City are reduced.

#### **16.14.140 Approval Procedures**

Determinations as to compliance with the procedures and regulations of the sensitive lands provisions of this Chapter shall be recommended-determined by ~~the Planning Commission Staff and decided by the City Council~~ as part of the consideration of preliminary approval of a development application. ~~The Planning Commission Staff may recommend, and the City Council may impose,~~ conditions pursuant to which preliminary approval is granted in order to uphold and enforce the provisions of this Chapter.

### **CHAPTER 16.16 PLANNED UNIT DEVELOPMENTS AND STANDARD SUBDIVISIONS**

#### 16.16.020 Definitions

F. Planned Unit Development. A residential project which consists of individually owned units which whose owners are part of a property owners association which holds title to certain common areas, provides services to their constituent property owners, enforces and administers certain covenants and restrictions common to the project. Once a PUD has been approved by the City ~~Council~~ and recorded, no further subdivision of that plat will be approved by the City of Midway.

G. Standard Subdivisions. Any proposal to create four or more residential dwelling units and/or building lots from one or more existing lots of record. Once a standard subdivision has been approved by the City ~~Council~~ and recorded, no further subdivision of that plat will be approved by the City of Midway.

#### **16.16.050 Master Plan**

A.13.

k. Master Plan applications must be reviewed by ~~the Planning Commission and approved by the City Council~~ City Staff.

~~m. The Planning Commission and City Council may schedule such public hearings and extra meetings as they deem necessary to find the information necessary to make a recommendation to the City Council for a Master Plan.~~

~~nn.~~ After approval of the Master Plan by the City ~~Council~~, a Master Plan Agreement must be prepared and executed by the applicant and the City, sufficient to describe the entitlement granted to implement the Master Plan. The Agreement must be signed by the applicant within 90 days of Final Approval of the Master Plan by the City ~~Council~~. If the Agreement is not fully executed within 90 days of Final Approval of the Master Plan, then all Master Plan approvals shall become null and void.

#### **16.16.060 Preliminary Plan**

V. Any other information City Staff, ~~the Planning Commission, or the City Council~~ may determine necessary relating to the particular site of the proposed project.

#### **16.16.070 General Standards And Requirements**

A.

2. The area proposed for a PUD or standard subdivision shall be in one ownership during development to provide for full supervision and control of said development and to ensure conformance with these provisions and all other conditions ~~recommended by the Planning Commission and set by the City Council imposed by City Staff~~ upon the preliminary and final development plans.

5. All areas not covered by buildings, parking, streets or drives shall be planted with grass, trees, shrubs or other plant materials to preserve and protect the final grading plan and the drainage plan proposed are part of the project as part of the submittal of the final landscape plan. Areas may be allowed to be left in a natural state, or xeriscape, ~~if the Planning Commission and City Council upon determination by City Staff, who may consider recommendation from the Water Board, if such determination finds~~ this more desirable than traditional landscaping; also, a permanent sprinkler system shall be installed in all landscaped areas to provide irrigation of planted areas.

8. The developer shall install all public improvements on-site and off-site as identified by ~~the City Council Staff~~.

10. All parking areas shall be screened from public view, when possible, with berms and landscaped features as required by the City ~~Council Staff~~ based on specific circumstances of the parking area location.

#### **16.16.080 Standards And Requirements Specific To Planned Unit Developments**

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3. All streets in a PUD will be privately owned and maintained except for any street that the City ~~Council~~ specifically agrees will be owned and maintained publicly. Public streets will generally be Collector Roads and will most likely be listed in the Capitol Facilities Plan.

4.

e. Front setbacks for buildings from all private streets within the PUD shall be staggered at seven and one-half feet variances, with 30 feet the minimum setback. One-third of the buildings containing dwelling units shall be at each of at least three different setbacks as ~~recommended by the Planning~~

~~Commission and approved by the City Council~~ approved by City Staff. For example, one-third at 30 feet, one-third at 37 ½ feet and one-third at 45 feet. Setbacks for accessory buildings shall be as ~~recommended by the Planning Commission and~~ approved by the City Council Staff. Setbacks from private streets shall be measured from top-back of curb or back of sidewalk or trail, whichever is further from the street centerline. ~~The City Council Staff~~ may waive this requirement when a curvilinear street design is used and shown to create the same varying setback effect.

#### **16.16.090 Standards And Requirements Specific To Standard Subdivisions**

A.2.

a. Setbacks from the following streets shall be a minimum of 100' (with the exception of a shelter for a bus stop not to exceed 200' square feet or as approved by the City ~~Council~~).

#### **16.16.100 Open Space General Requirements**

A. Open space is defined as a portion of a development site that is permanently set aside for public or private use and that will not be developed or sold to individual owners. Open space shall not contain residences. Improvements such as club houses, shelters, covered swimming pools, and gazebos may be included within the open space requirement along with uncovered recreational facilities such as football fields, baseball diamonds, basketball courts and playgrounds. Open space shall be planned and designed to encourage and promote its proper use, care and ongoing maintenance. Specifics of vegetation, landscaping, amenities, improvements, recreational facilities, etc. within the open space shall be proposed by the applicant, ~~approved by the Planning Commission and City Council, and then set forth in detail in the development agreement for the project and subject to approval by City Staff.~~

C. Entry features such as roundabouts, median planter strips, fountains, etc. may count as open space if the design of such features is ~~recommended by the Planning Commission and~~ approved by the City Council Staff.

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2. Place the open space in a perpetual conservation easement granted to an established conservation organization, as approved by the City ~~Council~~. If the open space is placed in a conservation easement, a maintenance agreement shall be entered into with the conservation organization to guarantee proper maintenance of the open space. Open space included within the boundaries of two (2) acre or larger building lots shall not be subject to the restrictions of this paragraph.

#### **16.16.140 Recommendation Of Preliminary Plan To City Council**

~~Upon the Planning Commission's completed review and recommended approval of a Preliminary Plan of a PUD or standard subdivision, the Planning Commission shall recommend the Preliminary Plan to the City Council for approval or denial, with or without conditions. The applicant shall submit to the City Planning Department a complete application for consideration of Preliminary Approval based on applicable law.~~

#### **16.16.150 Public Hearing Meeting**

~~After receiving notice of the Planning Commission's recommendation of approval, or denial, the City Council shall set and hold a public hearing to consider preliminary/final approval or denial of the project. After receipt and review of a complete application for Preliminary review, City Staff may refer the application to the Planning Commission for a public meeting and for a Planning Commission recommendation as to approval or denial.~~

#### **16.16.160 Preliminary Approval ~~Of City Council~~**

~~After holding the public hearing, the City Council City Staff shall approve, approve with conditions, or deny the Preliminary Plan based on the same standards as required above for preliminary approval by the Planning Commission set forth in applicable law.~~

#### **16.16.170 Time Limit For Preliminary Plan Approval**

Any failure to submit a proposed final plan and final approval submittal package within one year of the approval of the Preliminary Plan ~~by the City Council~~ shall terminate all proceedings and render the Preliminary Plan null and void.

#### **16.16.180 Final Approval Submittal Package**

If the Preliminary Plan is approved ~~by the City Council~~, the developer shall submit one full size copy~~ies~~ and three 11" x 17" copies of the proposed final plat and a final approval submittal package to the ~~Planning Commission~~ City composed of the following:

1. All material, studies and requirements as requested by the ~~Planning Commission or City Council as conditions of preliminary approval~~ City.

#### **16.16.210 Final Plan Approval Recommendation By Planning Commission**

~~After receiving a complete proposed final plat and final approval submittal package, the Planning Commission City shall consider the development for final approval. If the Planning Commission finds that all the requirements of this Title and all the conditions of preliminary approval of the development imposed by the City have been met, the Planning Commission shall recommend final approval of the development to the City Council. If the Planning Commission finds that any requirements or conditions have not been met, the Planning Commission shall continue the matter until such requirements or conditions have been met or forward such information on to the City Council with a recommendation as to how the City Council should act with respect to final approval of the development.~~

#### **16.16.220 Final Approval ~~By City Council~~**

~~If the City finds that all the requirements of this Title and all the conditions of preliminary approval of the development imposed by the City have been met, the City shall grant final approval of the development. If the City finds that any requirements or conditions have not been met, the City may deny or continue the matter until such requirements or conditions have been met.~~

~~After receiving the recommendation of the Planning Commission with respect to final approval, the City Council shall consider the development for final approval.~~

~~The City Council shall determine whether the proposed final plat and final submittal package meet all requirements of this Ordinance Title and the conditions of the development's preliminary approval by the City. The City Council shall consider the information and recommendation forwarded to it by the Planning Commission with respect to final approval. Based on all these criteria, the City Council shall approve, approve the conditions, or deny final approval of the development.~~

~~If the City Council denies final approval, the City Council shall state in detail the basis for its denial, referring specifically to the requirements of this ordinance Title and the conditions of preliminary approval.~~

~~For no more than a one-year period after such denial of final approval by the City Council, the applicant may re-apply to the Planning Commission and then to the City Council for final approval pursuant to the above-described process, but only if the City Council's reasons for denial have been resolved.~~

### **16.16.230 Duration Of Final Approval**

The duration of final approval shall be for one year from the date of final approval of the development by the City ~~Council~~. Should a final plat not be recorded by the County Recorder within the one-year period, the development's approval shall be voided, and both preliminary and final approvals must be re-obtained, unless, on a showing of extenuating circumstances, the City Council extends the time limit for plat recording, with or without conditions. Such conditions may include, but are not limited to, provisions requiring that: (a) construction must be conducted according to any new City standards in effect at the time the plat is ultimately recorded; (b) the property must be maintained in a clean, dust-free, and weed-free condition at all times; (c) each extension will be for a one-year period only, after which time an annual review must be presented before the City Council; and/or (d) no more than three one-year extensions will be allowed. The granting or denying of any extension, with or without conditions, is within the sole discretion of the City Council, and an applicant has no right to receive such an extension.

### **16.16.340 Appeals in Disputes Involving Public Improvements/Engineering Standards**

The appeal process and procedures for disputes involving public improvements/engineering standards will be in accordance with Utah State Law.

### **16.17.060 Standards And Requirements**

The following standards, requirements and conditions shall apply to all small subdivisions:

H. The developer shall install all public improvements on-site and off-site as identified by the ~~City Planning Commission and City Council~~.

### **16.17.080 Recommendation Of Preliminary/Final Plan To City Council**

~~The Planning Commission shall recommend approval or denial this plan to the City Council, with or without conditions. City Staff shall approve, approve with conditions, or deny the Preliminary/Final Plan based on the standards set forth in applicable law.~~

### **16.17.090 Public Hearing Meeting**

~~After receiving notice of the Planning Commission's recommendation of approval, or denial, the City Council shall set and hold a public hearing to consider preliminary/final approval or denial of the project. After receipt and review of a complete application for Preliminary/Final review, City Staff may refer the application to the Planning Commission for a public meeting and for a Planning Commission recommendation as to approval or denial.~~

### **16.17.100 Preliminary/Final Approval Of City Council**

~~After holding the public hearing, the City Council shall approve, approve with conditions, or deny the preliminary/final plan based on the same standards as required above for preliminary/final approval by the Planning Commission. City Staff shall approve, approve with conditions, or deny the Preliminary/Final Plan based on the same standards as required above for preliminary/final approval by the City set forth in applicable law.~~

### **16.17.110 Time Limit For Preliminary/Final Approval**

1. Any failure to record the plat of a proposed preliminary/final plan application within one year of the approval of the proposed plan by the City ~~Council~~ shall terminate all proceedings and render the preliminary/final plan null and void.

The duration of Preliminary/Final Approval shall be for one year from the date of approval of the development by the City ~~Council~~. If the Final Plat is not recorded with the County Recorder within the one-year period, the development's approval shall be voided, and both Preliminary/Final Approvals must be re-obtained to reinstate the project, unless, upon request by the applicant and on a showing of extenuating circumstances, the City Council extends the time limit for plat recording, with or without conditions. Such conditions may include, but are not limited to, provisions requiring that:

1. Construction must be conducted per any new City standards in effect at the time the plat is ultimately recorded;
2. The property must be maintained in a clean, dust-free, and weed-free condition always;
3. Each extension will be for a one-year period only, after which time an annual review must be requested by the applicant and presented before the City Council; and/or
4. No more than three one-year extensions will be allowed. The granting or denying of any extension, with or without conditions, is within the sole discretion of the City Council, and an applicant has no right to receive such an extension.

### **16.17.220 Appeals in Disputes Involving Public Improvements/Engineering Standards**

The appeal process and procedures for disputes involving public improvements/engineering standards will be in accordance with Utah State Law.

## **CHAPTER 16.18 RURAL PRESERVATION SUBDIVISION**

### **16.18.140 Access**

Each lot must have access from a private driveway that complies with the following standards:

1. A 20' wide gravel driveway is the minimum standard for non-shared driveways less than 80' in length.
2. Driveway standards for shared driveways or any driveway over 80' in length is a minimum of 20' wide gravel road base and must have 5' wide clear zones on both sides of the driveway.
  1. If conditions exist that promote erosion and storm water discharge such as the length of the driveway, grade of the driveway, and or soil conditions of the surrounding area then the City ~~Council~~ may require the driveway to be paved.

E. The developer shall install all public improvements on-site and off-site as identified by the ~~Planning Commission and City Council~~.

### **16.18.200 ~~Recommendation Of Preliminary/Final Plan To City Council~~**

~~Upon the Planning Commission's approval of the preliminary/final plan of a Rural Preservation subdivision, the Planning Commission shall recommend this plan to the City Council for direction, with or without conditions. City Staff shall approve, approve with conditions, or deny the Preliminary/Final Plan based on the standards set forth in applicable law.~~

### **16.18.210 Public ~~Hearing Meeting~~**

~~After receiving notice of Planning Commission approval of the preliminary/final plan, or upon the City Council's reversing on appeal the Planning Commission's disapproval of a preliminary/final plan, the City Council shall set and hold a public hearing to consider preliminary/final approval of the project. After receipt and review of a complete application for Preliminary/Final review, City Staff may refer the~~

application to the Planning Commission for a public meeting and for a Planning Commission recommendation as to approval or denial.

#### **16.18.220 Preliminary/Final Approval ~~Of City Council~~**

~~After holding the public hearing, the City Council shall approve, approve with conditions, or deny the preliminary/final plan based on the same standards as required above for preliminary/final approval by the Planning Commission.~~ City Staff shall approve, approve with conditions, or deny the Preliminary/Final Plan based on the same standards as required above for preliminary/final approval by the City set forth in applicable law.

#### **16.18.330 Appeals in Disputes Involving Public Improvements/Engineering Standards**

The appeal process and procedures for disputes involving public improvements/engineering standards will be in accordance with Utah State Law.

#### **16.30.170 Access**

Each lot must have access from a private driveway that complies with the following standards:

A 20' wide gravel driveway is the minimum standard for non-shared driveways less than 80' in length.

Driveway standards for shared driveways or any driveway over 80' in length is a minimum of 20' wide gravel road base and must have 5' wide clear zones on both sides of the driveway.

If conditions exist that promote erosion and storm water discharge such as the length of the driveway, grade of the driveway, and or soil conditions of the surrounding area then the City ~~Council~~ may require the driveway to be paved.

#### **16.30.230 Standards And Requirements**

The following standards, requirements and conditions shall apply to all Density Reduction Subdivisions:

The project must be prepared by a design team composed of at least a civil engineer or land surveyor who must be licensed to practice in the State of Utah.

All dwelling units shall be served by a city-approved water supply. All utilities within the Density Reduction Subdivision shall be placed underground, including telephone, power and television. All dwelling units shall have separate utility connections and metering.

The area proposed for a Density Reduction Subdivision shall be in one ownership during development to provide for full supervision and control of said development and to insure conformance with these provisions.

The developer shall install all public and private improvements on-site and off-site as identified by the ~~Planning Commission and City Council~~.

#### **16.30.250 Recommendation Of Preliminary/Final Plan ~~To City Council~~**

~~Upon the Planning Commission's recommendation of approval of the preliminary/final plan of a Density Reduction Subdivision, the Planning Commission shall recommend this plan to the City Council for~~

~~direction, with or without conditions. City Staff shall approve, approve with conditions, or deny the Preliminary/Final Plan based on the standards set forth in applicable law.~~

### **16.30.260 Public Hearing Meeting**

~~After receiving notice of the Planning Commission's recommendation approval of the preliminary/final plan, or upon the City Council's reversing on appeal the Planning Commission's disapproval of a preliminary/final plan, the City Council shall set and hold a public hearing to consider preliminary/final approval of the project. After receipt and review of a complete application for Preliminary/Final review, City Staff may refer the application to the Planning Commission for a public meeting and for a Planning Commission recommendation as to approval or denial.~~

### **16.30.270 Preliminary/Final Approval Of City Council**

~~After holding the public hearing, the City Council shall approve, approve with conditions, or deny the preliminary/final plan based on the same standards as required above for preliminary/final approval by the Planning Commission. City Staff shall approve, approve with conditions, or deny the Preliminary/Final Plan based on the same standards as required above for preliminary/final approval by the City set forth in applicable law.~~

### **16.30.380 Appeals in Disputes Involving Public Improvements/Engineering Standards**

The appeal process and procedures for disputes involving public improvements/engineering standards will be in accordance with Utah State Law.





# SB174 Summary & Frequently asked Questions Fact Sheet on Subdivisions

June 2023

## SB 174 Local Land Use and Development Revisions (Fillmore)

[SB 174](#) changes three areas of the Land Use, Development, and Management Act:

1. It creates a new process that all municipalities and counties must follow for subdividing residential lots.
2. It modifies the Internal Accessory Dwelling Unit (IADU) provisions enacted in HB 82 (2021).
3. Lastly, the bill creates a penalty for cities and counties who fail to comply with MIHP reporting requirements beginning with the 2024 reporting cycle. Note: HB 364 modified the MIHP reporting timeline.

The focus of this document is on the Subdivision piece. See [ULCT.org](http://ULCT.org) for a complete bill summary.

**Action Necessary:** SB 174 requires local governments to update their subdivision ordinances. Deadlines vary based on municipal population. They are specified in the details section below. ULCT secured additional technical assistance resources from the state for ordinance updates. We expect the funding program to be created this summer. Some municipalities may need to update their Internal IADU ordinances as well. The IADU provisions take effect on May 3, 2023.

## Detailed Summary Subdivisions

### Two-step Administrative Subdivision Process

- SB 174 requires local governments to each designate an Administrative Land Use Authority (ALUA) to review subdivision applications. These authorities may not be members of a town/city council.
- SB 174 establishes a two-step process for approving subdivisions. You may also do a combined process for application review. **Municipalities who are required to comply with MIHP reporting** (all cities with populations > 10,000 and cities with populations >

5,000 located in a county of the 1st, 2nd, or 3rd class) must revise their subdivisions ordinances to comply with this process by **Feb. 1, 2024**.

- **All other municipalities** must revise their subdivision ordinances to comply with this process by **Dec. 31, 2024**.
  - Step 1) **preliminary subdivision application review** - the administrative land use authority (municipal staff or planning commissioners) must review the subdivision application within **15 business days** of receiving a **complete application**. The complete application should be the basis of the checklist that you must develop and post for both preliminary and final review application review. The administrative land use authority may receive public comment and conduct one public hearing. If the application complies with applicable local regulations, it shall be approved and proceed to the second step.
  - Step 2) **final subdivision application review** - municipalities must complete a review of applications at this stage within **20 business days**. Municipalities may **perform up to four review cycles** on a given application. A review cycle is not considered complete until the applicant has adequately addressed all of the redlines identified by the municipality. Municipalities may only add new redlines after the first review cycle in response to changes made by the applicant or if a correction is necessary to protect public health or safety, or to enforce state or federal law.
  - If the application falls into a codified geological hazard area in your community (e.g. adopted and designated areas in your code) those applications are exempt from the review cycle.
- SB 174 creates two distinct appeal processes after the four review cycles have been exhausted and 20 days have passed.
  - For disputes relating to public improvement or engineering standards, the municipality shall assemble a three-person panel meeting within 10 days of receiving a request from the applicant.
  - For all other disputes, the municipality shall refer the question to the designated appeal authority at the applicant's request.
- The panel of experts includes:
  - One licensed engineer designated by the municipality.
  - One licensed engineer designated by the land use applicant.
  - One licensed engineer, agreed upon, and designated by the two designated engineers.

Members appointed to the panel may not have an interest in the application in question. The applicant must pay 50% of the total cost of the panel and the municipality's published appeal fee. The municipality pays the other 50%. The panel's decision is final, unless the municipality or applicant petition for district court review within 30 days after the final written decision is issued.

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**Frequently asked Questions & Answers by Todd Godfrey Esq. & League Staff**

**Question: Can local communities still retain an informal concept plan step?**

Answer: If it is requested or agreed to by the applicant you can but you can't require it.

**Question: A Planned Unit Development (PUD) is typically processed with a subdivision. As such, can a PUD still allow a concept plan?**

Answer: A concept plan for the PUD portions of a land use approval, yes. It will be important now to distinguish and separate your processes. It is recommend the legislative process run its course first.

**Question: If the City Council cannot approve a final plat what happens in small towns where the City Council is the only staff for reviewing applications?**

Answer: We need to train and educate a Planning Commissioner to fill that role or you can subcontract to an engineer and include it in your fee resolution as part of the application fee.

**Question: Should we assume that a "1-family dwelling" is a single-family detached dwelling, a "2-family dwelling" is a duplex, and a "townhouse" is an attached single-family dwelling (or zero-lot-line single-family dwelling)?**

Answer: Yes. That is how Todd is advising his clients.

**Question: How does a City Council accept a right of way street dedication if they don't approve the final plat?**

Answer: There is no legal requirement for the City or Town Council to accept a right of way dedication in the law. A City's acceptance of dedicated streets is demonstrated on a recorded plat, bearing the approval of the City or Town by the Mayor.

**Question: Is it four review cycles for both preliminary and final (total of 8) or four total?**

Answer: Four total. We read that as in between the preliminary and the final plat.

**Question: What happens after 4 cycles are complete? Does the city then issue a formal approval or denial?**

Answer: The City should issue an approval or denial. If they do not timely decide, then the applicant can call for the appeal panel to be convened as called for in the new legislation.

**Question: If the same subdivision includes several housing types, how does that change the review process? For example, a mixed-use project that includes single-family, townhouse, apartment, retail, commercial.**

Answer: If an applicant insists on a subdivision that mixes uses in a single plat, then it is my opinion the provisions of section 10-9a-604.1 do not restrict the process for review.

**Question: In our City there is a 3 step process preliminary, Design and engineering and then final plat. Design and engineering is reviewed by a development review committee meeting (utility providers ect.) Can we still have that middle phase?**

Answer: I would recommend you not identify the design and engineering as a separate approval process, and merge that with your preliminary or final review phase.

**Question: Can a small city hire a consultant or engineering firm to review and comment on the subdivision and bill the developer for the reviews.**

Answer: If your fee schedule supports that and if the charges are reasonable, yes.

**Question: Will the administrative land use authority be subject to OPMA requirements? Or can we just have them review the plat and sign if it is done?**

Answer: The administrative land use authority is subject to OPMA requirements if it is more than one person.

**Question: Is there a requirement for an application checklist?**

Answer: Yes, section 604.2(3)(b). This helps you determine a complete application, and the review cycles can begin.

**Question: Todd, Do you advise your clients to NOT hold a public hearing for subdivisions because they are administrative NOT legislative?**

Answer: Yes, I have advised some clients that way.

**Question: The legislation requires us to designate an “administrative land use authority” for preliminary plats and allows it to be staff or the Planning Commission (PC), but can it be both? Meaning, can we designate staff to be the administrative LAU with a caveat that staff can refer it to PC? Can we have it be staff for minor subdivisions ( 9 lots or less) and PC for major subdivisions? We would like to have the option of referring to PC if we feel that the subdivision may have a great deal of interest with the community or some other similar circumstance but for the most part, be able to have them handled with staff.**

Answer: The administrative land use authority for subdivisions may be a group of people of which one could be a planning commission member. That said, you are now approving the application against your complete application checklist and whatever you may define as the review parameters for preliminary review. You need to spell out those referral standards in ordinance instead of having staff exercise discretion about when and what to refer. Since subdivisions should be approved or rejected based on the complete application checklist and standards, the potential public interest in the subdivision should not be considered. This is a purely administrative action and the statute reflects that. The small subdivision standard for staff and larger subdivisions at PC at the preliminary stage is fine.

**Question: We currently have a pre-ap meeting that we highly recommend and then, what we refer to as the concept plan, is submitted with the application and goes through our Design Review Committee (DRC), which is mandatory, and then through this process we end up with the final plan which goes to the Planning Commission. Is it this DRC process that we can no longer mandate? It seems to me that if we get 4 opportunities for review, that this would be our DRC process. I have attached our subdivision approval and process checklist, which I hope will make my questions more coherent. I think I am getting caught up with terminology rather than the actions/process and that is what is confusing me.**

Answer: You can continue to use a DRC review process, but you should clarify on your checklist that the city recommends a pre-application meeting to review requirements for subdivisions with city staff. We recommend the meeting even though the meeting is not mandatory. When the **complete** application comes in officially, you have 15 days to convene the DRC and complete the staff review and make recommendations to the Administrative Land Use Authority for review and decision.

**Question: In regards to HB406 10-9a-604.5(3)(d)(iv) states, “landscaping improvements that are not public landscaping improvements, as defined in section 10-9a-103, unless the landscaping improvements and completion assurance are required under the terms of a development agreement”. There isn’t a definition of public landscaping improvements in 10-9a-103. We are trying, wherever possible to use the same verbiage as the code but there isn’t anything. I am assuming that we can use the language from 10-9a-604.5 which actually has a definition, correct?**

Answer: You are correct about the missing definition so use 604.5. We highlighted that missing definition during the session but legislative research was comfortable with using 604.5. We will try to fix this in the next session.

**Question: For those landscape bonds that we have previously required and collected, if the landscape improvements aren’t made, are we still able to enforce them? They are all vested, is that correct? Or do we have to release all the landscape bonds that we currently have and then incorporate them in to a development agreement?**

Answer: We recommend stopping the enforcement of bonds and requirements that are for private landscaping only. I am advising my clients (and my advice was the same before the statutory revisions this year) that landscaping requirements on private property should be limited to development agreement situations. There are exceptions to this, but not many. When a city does require landscaping on private property in a development agreement, I also include a bonding provision in the agreement.