

1                                   **SUBDIVISION AND LAND USE AMENDMENTS**

2   1999 GENERAL SESSION

3   STATE OF UTAH

4   **Sponsor: Peter C. Knudson**

5 AN ACT RELATING TO CITIES AND TOWNS AND COUNTIES; DEFINING TERMS;  
6 MODIFYING THE DEFINITION OF SUBDIVISION TO EXCLUDE CERTAIN GAS  
7 COMPANY FACILITIES; AND MAKING TECHNICAL CHANGES.

8 This act affects sections of Utah Code Annotated 1953 as follows:

9 AMENDS:

10           **10-9-103**, as last amended by Chapters 37 and 89, Laws of Utah 1998

11           **10-9-106**, as last amended by Chapter 23, Laws of Utah 1992

12           **17-27-103**, as last amended by Chapter 89, Laws of Utah 1998

13           **17-27-105**, as last amended by Chapter 23, Laws of Utah 1992

14 *Be it enacted by the Legislature of the state of Utah:*

15           Section 1. Section **10-9-103** is amended to read:

16           **10-9-103. Definitions -- Notice.**

17           (1) As used in this chapter:

18           (a) "Billboard" means a freestanding ground sign located on industrial, commercial, or  
19 residential property if the sign is designed or intended to direct attention to a business, product, or  
20 service that is not sold, offered, or existing on the property where the sign is located.

21           (b) "Chief executive officer" means:

22           (i) the mayor in municipalities operating under all forms of municipal government except  
23 the council-manager form; or

24           (ii) the city manager in municipalities operating under the council-manager form of  
25 municipal government.

26           (c) "Conditional use" means a land use that, because of its unique characteristics or  
27 potential impact on the municipality, surrounding neighbors, or adjacent land uses, may not be

28 compatible in some areas or may be compatible only if certain conditions are required that mitigate  
29 or eliminate the detrimental impacts.

30 (d) "County" means the unincorporated area of the county.

31 (e) "Elderly person" means a person who is 60 years old or older, who desires or needs to  
32 live with other elderly persons in a group setting, but who is capable of living independently.

33 (f) "Gas corporation" has the same meaning as defined in Section 54-2-1.

34 [(f)] (g) (i) "General plan" means a document that a municipality adopts that sets forth  
35 general guidelines for proposed future development of the land within the municipality, as set forth  
36 in Sections 10-9-301 and 10-9-302.

37 (ii) "General plan" includes what is also commonly referred to as a "master plan."

38 (h) "Interstate pipeline company" means a person or entity engaged in natural gas  
39 transportation subject to the jurisdiction of the Federal Energy Regulatory Commission under the  
40 Natural Gas Act, 15 U.S.C. Sec. 717 et seq.

41 (i) "Intrastate pipeline company" means a person or entity engaged in natural gas  
42 transportation that is not subject to the jurisdiction of the Federal Energy Regulatory Commission  
43 under the Natural Gas Act, 15 U.S.C. Sec. 717 et seq.

44 [(g)] (j) "Legislative body" means the city council or city commission.

45 [(h)] (k) "Lot line adjustment" in a subdivision means the relocation of the property  
46 boundary line between two adjoining lots with the consent of the owners of record.

47 [(i)] (l) "Municipality" means a city or town.

48 [(j)] (m) "Nonconforming structure" means a structure that:

49 (i) legally existed before its current zoning designation; and

50 (ii) because of subsequent zoning changes, does not conform with the zoning regulation's  
51 setback, height restrictions, or other regulations that govern the structure.

52 [(k)] (n) "Nonconforming use" means a use of land that:

53 (i) legally existed before its current zoning designation;

54 (ii) has been maintained continuously since the time the zoning regulation governing the  
55 land changed; and

56 (iii) because of subsequent zoning changes, does not conform with the zoning regulations  
57 that now govern the land.

58 [(l)] (o) "Official map" means a map of proposed streets that has the legal effect of

59 prohibiting development of the property until the municipality develops the proposed street.

60 [~~(m)~~] (p) (i) "Residential facility for elderly persons" means a single-family or  
61 multiple-family dwelling unit that meets the requirements of Part 5 and any ordinance adopted  
62 under authority of that part.

63 (ii) "Residential facility for elderly persons" does not include a health care facility as  
64 defined by Section 26-21-2.

65 [~~(n)~~] (q) "Special district" means all entities established under the authority of Title 17A,  
66 Special Districts, and any other governmental or quasi-governmental entity that is not a county,  
67 municipality, school district, or unit of the state.

68 [~~(o)~~] (r) "Street" means public rights-of-way, including highways, avenues, boulevards,  
69 parkways, roads, lanes, walks, alleys, viaducts, subways, tunnels, bridges, public easements, and  
70 other ways.

71 [~~(p)~~] (s) (i) "Subdivision" means any land that is divided, resubdivided or proposed to be  
72 divided into two or more lots, parcels, sites, units, plots, or other division of land for the purpose,  
73 whether immediate or future, for offer, sale, lease, or development either on the installment plan  
74 or upon any and all other plans, terms, and conditions.

75 (ii) "Subdivision" includes:

76 (A) the division or development of land whether by deed, metes and bounds description,  
77 devise and testacy, lease, map, plat, or other recorded instrument; and

78 (B) except as provided in Subsection (1)[~~(p)~~] (s)(iii), divisions of land for all residential  
79 and nonresidential uses, including land used or to be used for commercial, agricultural, and  
80 industrial purposes.

81 (iii) "Subdivision" does not include:

82 (A) a bona fide division or partition of agricultural land for the purpose of joining one of  
83 the resulting separate parcels to a contiguous parcel of unsubdivided agricultural land, if neither  
84 the resulting combined parcel nor the parcel remaining from the division or partition violates an  
85 applicable zoning ordinance;

86 (B) a recorded agreement between owners of adjoining properties adjusting their mutual  
87 boundary if:

88 (I) no new lot is created; and

89 (II) the adjustment does not result in a violation of applicable zoning ordinances; [~~(t)~~]

90 (C) a recorded document, executed by the owner of record, revising the legal description  
91 of more than one contiguous parcel of property into one legal description encompassing all such  
92 parcels of property[-]; or

93 (D) a bona fide division or partition of land for the purpose of siting, on one or more of  
94 the resulting separate parcels, an unmanned facility appurtenant to a pipeline owned or operated  
95 by a gas corporation, interstate pipeline company, or intrastate pipeline company.

96 (iv) The joining of a subdivided parcel of property to another parcel of property that has  
97 not been subdivided does not constitute a "subdivision" under this Subsection (1)[(p)] (s) as to the  
98 unsubdivided parcel of property or subject the unsubdivided parcel to the municipality's  
99 subdivision ordinance.

100 [(q)] (t) "Unincorporated" means the area outside of the incorporated boundaries of cities  
101 and towns.

102 (2) (a) A municipality meets the requirements of reasonable notice required by this chapter  
103 if it:

104 (i) posts notice of the hearing or meeting in at least three public places within the  
105 jurisdiction and publishes notice of the hearing or meeting in a newspaper of general circulation  
106 in the jurisdiction, if one is available; or

107 (ii) gives actual notice of the hearing or meeting.

108 (b) A municipal legislative body may enact an ordinance establishing stricter notice  
109 requirements than those required by this Subsection (2).

110 (c) (i) Proof that one of the two forms of notice authorized by this subsection was given  
111 is prima facie evidence that notice was properly given.

112 (ii) If notice given under authority of this section is not challenged as provided in Section  
113 10-9-1001 within 30 days from the date of the meeting for which the notice was given, the notice  
114 is considered adequate and proper.

115 Section 2. Section **10-9-106** is amended to read:

116 **10-9-106. Property owned by other government units -- Effect of land use and**  
117 **development ordinances -- Certain gas company facilities not subject to regulations.**

118 (1) (a) Each county, municipality, school district, special district, and political subdivision  
119 of Utah shall conform to the land use and development ordinances of any municipality when  
120 installing, constructing, operating, or otherwise using any area, land, or building situated within

121 that municipality only in a manner or for a purpose that conforms to that municipality's ordinances.

122 (b) In addition to any other remedies provided by law, when a municipality's land use and  
123 development ordinances are being violated or about to be violated by another political subdivision,  
124 that municipality may institute an injunction, mandamus, abatement, or other appropriate action  
125 or proceeding to prevent, enjoin, abate, or remove the improper installation, improvement, or use.

126 (2) A school district is subject to a municipality's land use regulations under this chapter,  
127 except that a municipality may not:

128 (a) impose requirements for landscaping, fencing, aesthetic considerations, construction  
129 methods or materials, building codes, building use for educational purposes, or the placement or  
130 use of temporary classroom facilities on school property;

131 (b) require a school district to participate in the cost of any roadway or sidewalk not  
132 reasonably necessary for the safety of school children and not located on or contiguous to school  
133 property, unless the roadway or sidewalk is required to connect an otherwise isolated school site  
134 to an existing roadway;

135 (c) require a district to pay fees not authorized by this section;

136 (d) provide for inspection of school construction or assess a fee or other charges for  
137 inspection, unless neither the school district nor the state superintendent has provided for  
138 inspection by an inspector, other than the project architect or contractor, who is qualified under  
139 criteria established by the state superintendent with the approval of the state building board and  
140 state fire marshal;

141 (e) require a school district to pay any impact fee for an improvement project that is not  
142 reasonably related to the impact of the project upon the need that the improvement is to address;  
143 or

144 (f) impose regulations upon the location of a project except as necessary to avoid  
145 unreasonable risks to health or safety.

146 (3) A municipality may not impose land use regulations on land used for the purpose of  
147 siting an unmanned facility appurtenant to a pipeline owned or operated by a gas corporation,  
148 interstate pipeline company, or intrastate pipeline company.

149 Section 3. Section 17-27-103 is amended to read:

150 **17-27-103. Definitions -- Notice.**

151 (1) As used in this chapter:

152 (a) "Billboard" means a freestanding ground sign located on industrial, commercial, or  
153 residential property if the sign is designed or intended to direct attention to a business, product, or  
154 service that is not sold, offered, or existing on the property where the sign is located.

155 (b) "Chief executive officer" means the county executive, or if the county has adopted an  
156 alternative form of government, the official who exercises the executive powers.

157 (c) "Conditional use" means a land use that, because of its unique characteristics or  
158 potential impact on the county, surrounding neighbors, or adjacent land uses, may not be  
159 compatible in some areas or may be compatible only if certain conditions are required that mitigate  
160 or eliminate the detrimental impacts.

161 (d) "County" means the unincorporated area of the county.

162 (e) "Elderly person" means a person who is 60 years old or older, who desires or needs to  
163 live with other elderly persons in a group setting, but who is capable of living independently.

164 (f) "Gas corporation" has the same meaning as defined in Section 54-2-1.

165 ~~(f)~~ (g) (i) "General plan" means a document that a county adopts that sets forth general  
166 guidelines for proposed future development of the land within the county, as set forth in Sections  
167 17-27-301 and 17-27-302.

168 (ii) "General plan" includes what is also commonly referred to as a "master plan."

169 (h) "Interstate pipeline company" means a person or entity engaged in natural gas  
170 transportation subject to the jurisdiction of the Federal Energy Regulatory Commission under the  
171 Natural Gas Act, 15 U.S.C. Sec. 717 et seq.

172 (i) "Intrastate pipeline company" means a person or entity engaged in natural gas  
173 transportation that is not subject to the jurisdiction of the Federal Energy Regulatory Commission  
174 under the Natural Gas Act, 15 U.S.C. Sec. 717 et seq.

175 ~~(g)~~ (j) "Legislative body" means the county legislative body, or for a county that has  
176 adopted an alternative form of government, the body exercising legislative powers.

177 ~~(h)~~ (k) "Lot line adjustment" means the relocation of the property boundary line between  
178 two adjoining lots with the consent of the owners of record.

179 (i) (l) "Municipality" means a city or town.

180 (j) (m) "Nonconforming structure" means a structure that:

181 (i) legally existed before its current zoning designation; and

182 (ii) because of subsequent zoning changes, does not conform with the zoning regulation's

183 setback, height restrictions, or other regulations that govern the structure.

184 [~~(k)~~] (n) "Nonconforming use" means a use of land that:

185 (i) legally existed before its current zoning designation;

186 (ii) has been maintained continuously since the time the zoning regulation governing the

187 land changed; and

188 (iii) because of subsequent zoning changes, does not conform with the zoning regulations

189 that now govern the land.

190 [~~(f)~~] (o) "Official map" means a map of proposed streets that has the legal effect of

191 prohibiting development of the property until the county develops the proposed street.

192 [~~(m)~~] (p) (i) "Residential facility for elderly persons" means a single-family or

193 multiple-family dwelling unit that meets the requirements of Part 5 and any ordinance adopted

194 under authority of that part.

195 (ii) "Residential facility for elderly persons" does not include a health care facility as

196 defined by Section 26-21-2.

197 [~~(n)~~] (q) "Special district" means all entities established under the authority of Title 17A,

198 Special Districts, and any other governmental or quasi-governmental entity that is not a county,

199 municipality, school district, or unit of the state.

200 [~~(o)~~] (r) "Street" means public rights-of-way, including highways, avenues, boulevards,

201 parkways, roads, lanes, walks, alleys, viaducts, subways, tunnels, bridges, public easements, and

202 other ways.

203 [~~(p)~~] (s) (i) "Subdivision" means any land that is divided, resubdivided or proposed to be

204 divided into two or more lots, parcels, sites, units, plots, or other division of land for the purpose,

205 whether immediate or future, for offer, sale, lease, or development either on the installment plan

206 or upon any and all other plans, terms, and conditions.

207 (ii) "Subdivision" includes the division or development of land whether by deed, metes

208 and bounds description, devise and testacy, lease, map, plat, or other recorded instrument.

209 (iii) "Subdivision" does not include:

210 (A) a bona fide division or partition of agricultural land for agricultural purposes;

211 (B) a recorded agreement between owners of adjoining properties adjusting their mutual

212 boundary if:

213 (I) no new lot is created; and

214 (II) the adjustment does not result in a violation of applicable zoning ordinances; [or]

215 (C) a recorded document, executed by the owner of record, revising the legal description  
216 of more than one contiguous parcel of property into one legal description encompassing all such  
217 parcels of property[.]; or

218 (D) a bona fide division or partition of land for the purpose of siting, on one or more of  
219 the resulting separate parcels, an unmanned facility appurtenant to a pipeline owned or operated  
220 by a gas corporation, interstate pipeline company, or intrastate pipeline company.

221 (iv) The joining of a subdivided parcel of property to another parcel of property that has  
222 not been subdivided does not constitute a "subdivision" under this Subsection (1)[(p)] (s) as to the  
223 unsubdivided parcel of property or subject the unsubdivided parcel to the county's subdivision  
224 ordinance.

225 [(q)] (t) "Unincorporated" means the area outside of the incorporated boundaries of cities  
226 and towns.

227 (2) (a) A county meets the requirements of reasonable notice required by this chapter if  
228 it:

229 (i) posts notice of the hearing or meeting in at least three public places within the  
230 jurisdiction and publishes notice of the hearing or meeting in a newspaper of general circulation  
231 in the jurisdiction, if one is available; or

232 (ii) gives actual notice of the hearing or meeting.

233 (b) A county legislative body may enact an ordinance establishing stricter notice  
234 requirements than those required by this Subsection (2).

235 (c) (i) Proof that one of the two forms of notice authorized by this subsection was given  
236 is prima facie evidence that notice was properly given.

237 (ii) If notice given under authority of this section is not challenged as provided in Section  
238 17-27-1001 within 30 days from the date of the meeting for which the notice was given, the notice  
239 is considered adequate and proper.

240 Section 4. Section 17-27-105 is amended to read:

241 **17-27-105. Property owned by other government units -- Effect of land use and**  
242 **development ordinances -- Certain gas company facilities not subject to regulations.**

243 (1) (a) Each county, municipality, school district, special district, and political subdivision  
244 of Utah shall conform to the land use and development ordinances of any county when installing,



245 constructing, operating, or otherwise using any area, land, or building situated within that county  
246 only in a manner or for a purpose that conforms to that county's ordinances.

247 (b) In addition to any other remedies provided by law, when a county's land use and  
248 development ordinances are being violated or about to be violated by another political subdivision,  
249 that county may institute injunction, mandamus, abatement, or other appropriate action or  
250 proceeding to prevent, enjoin, abate, or remove the improper installation, improvement, or use.

251 (2) A school district is subject to a county's land use regulations under this chapter, except  
252 that a county may not:

253 (a) impose requirements for landscaping, fencing, aesthetic considerations, construction  
254 methods or materials, building codes, building use for educational purposes, or the placement or  
255 use of temporary classroom facilities on school property;

256 (b) require a school district to participate in the cost of any roadway or sidewalk not  
257 reasonably necessary for the safety of school children and not located on or contiguous to school  
258 property, unless the roadway or sidewalk is required to connect an otherwise isolated school site  
259 to an existing roadway;

260 (c) require a district to pay fees not authorized by this section;

261 (d) provide for inspection of school construction or assess a fee or other charges for  
262 inspection, unless neither the school district nor the state superintendent has provided for  
263 inspection by an inspector, other than the project architect or contractor, who is qualified under  
264 criteria established by the state superintendent with the approval of the state building board and  
265 state fire marshal;

266 (e) require a school district to pay any impact fee for an improvement project that is not  
267 reasonably related to the impact of the project upon the need that the improvement is to address;  
268 or

269 (f) impose regulations upon the location of a project except as necessary to avoid  
270 unreasonable risks to health or safety.

271 (3) A county may not impose land use regulations on land used for the purpose of siting  
272 an unmanned facility appurtenant to a pipeline owned or operated by a gas corporation, interstate  
273 pipeline company, or intrastate pipeline company.

**Legislative Review Note**

**as of 1-26-99 1:28 PM**

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

**Office of Legislative Research and General Counsel**