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DEVELOPER FEES

2011 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Michael T. Morley

Senate Sponsor: Wayne L. Niederhauser

LONG TITLE

General Description:

This bill amends provisions related to municipal or county land use authority.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ amends provisions related to certain fees a municipality or a county may charge;
- ▶ requires a municipality or a county to establish a fee appeal process;
- ▶ enacts provisions related to a provider of culinary or secondary water that commits to provide a water service required by a public land use application;
- ▶ amends provisions related to a municipal or a county appeal authority; and
- ▶ makes technical corrections.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

10-9a-103, as last amended by Laws of Utah 2010, Chapters 269 and 330

10-9a-305, as last amended by Laws of Utah 2010, Chapters 203 and 330

10-9a-510, as last amended by Laws of Utah 2010, Chapter 203

H.B. 78



- 28 **10-9a-701**, as enacted by Laws of Utah 2005, Chapter 254
- 29 **17-27a-103**, as last amended by Laws of Utah 2010, Chapters 269 and 330
- 30 **17-27a-305**, as last amended by Laws of Utah 2010, Chapters 203 and 330
- 31 **17-27a-509**, as last amended by Laws of Utah 2010, Chapter 203
- 32 **17-27a-701**, as enacted by Laws of Utah 2005, Chapter 254

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

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

36 **10-9a-103. Definitions.**

37 As used in this chapter:

38 (1) "Affected entity" means a county, municipality, local district, special service
 39 district under Title 17D, Chapter 1, Special Service District Act, school district, interlocal
 40 cooperation entity established under Title 11, Chapter 13, Interlocal Cooperation Act, specified
 41 public utility, a property owner, a property owners association, or the Utah Department of
 42 Transportation, if:

43 (a) the entity's services or facilities are likely to require expansion or significant
 44 modification because of an intended use of land;

45 (b) the entity has filed with the municipality a copy of the entity's general or long-range
 46 plan; or

47 (c) the entity has filed with the municipality a request for notice during the same
 48 calendar year and before the municipality provides notice to an affected entity in compliance
 49 with a requirement imposed under this chapter.

50 (2) "Appeal authority" means the person, board, commission, agency, or other body
 51 designated by ordinance to decide an appeal of a decision of a land use application or a
 52 variance.

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

56 (4) "Building permit fee" means any fee charged to enforce the uniform codes adopted
 57 pursuant to Title 58, Chapter 56, Utah Uniform Building Standards Act, that is no greater than
 58 a fee indicated in the appendix to the International Building Code.

59 [~~(4)~~] (5) "Charter school" includes:

60 (a) an operating charter school;

61 (b) a charter school applicant that has its application approved by a chartering entity in
62 accordance with Title 53A, Chapter 1a, Part 5, The Utah Charter Schools Act; and

63 (c) an entity who is working on behalf of a charter school or approved charter applicant
64 to develop or construct a charter school building.

65 [~~(5)~~] (6) "Conditional use" means a land use that, because of its unique characteristics
66 or potential impact on the municipality, surrounding neighbors, or adjacent land uses, may not
67 be compatible in some areas or may be compatible only if certain conditions are required that
68 mitigate or eliminate the detrimental impacts.

69 [~~(6)~~] (7) "Constitutional taking" means a governmental action that results in a taking of
70 private property so that compensation to the owner of the property is required by the:

71 (a) Fifth or Fourteenth Amendment of the Constitution of the United States; or

72 (b) Utah Constitution Article I, Section 22.

73 [~~(7)~~] (8) "Culinary water authority" means the department, agency, or public entity with
74 responsibility to review and approve the feasibility of the culinary water system and sources for
75 the subject property.

76 [~~(8)~~] (9) "Development activity" means:

77 (a) any construction or expansion of a building, structure, or use that creates additional
78 demand and need for public facilities;

79 (b) any change in use of a building or structure that creates additional demand and need
80 for public facilities; or

81 (c) any change in the use of land that creates additional demand and need for public
82 facilities.

83 [~~(9)~~] (10) (a) "Disability" means a physical or mental impairment that substantially
84 limits one or more of a person's major life activities, including a person having a record of such
85 an impairment or being regarded as having such an impairment.

86 (b) "Disability" does not include current illegal use of, or addiction to, any federally
87 controlled substance, as defined in Section 102 of the Controlled Substances Act, 21 U.S.C.
88 802.

89 [~~(10)~~] (11) "Educational facility":

90 (a) means:

91 (i) a school district's building at which pupils assemble to receive instruction in a
92 program for any combination of grades from preschool through grade 12, including
93 kindergarten and a program for children with disabilities;

94 (ii) a structure or facility:

95 (A) located on the same property as a building described in Subsection [~~(10)~~]

96 (11)(a)(i); and

97 (B) used in support of the use of that building; and

98 (iii) a building to provide office and related space to a school district's administrative
99 personnel; and

100 (b) does not include land or a structure, including land or a structure for inventory
101 storage, equipment storage, food processing or preparing, vehicle storage or maintenance, or
102 similar use that is:

103 (i) not located on the same property as a building described in Subsection [~~(10)~~]

104 (11)(a)(i); and

105 (ii) used in support of the purposes of a building described in Subsection [~~(10)~~]

106 (11)(a)(i).

107 [~~(11)~~] (12) "Elderly person" means a person who is 60 years old or older, who desires
108 or needs to live with other elderly persons in a group setting, but who is capable of living
109 independently.

110 [~~(12)~~] (13) "Fire authority" means the department, agency, or public entity with
111 responsibility to review and approve the feasibility of fire protection and suppression services
112 for the subject property.

113 [~~(13)~~] (14) "Flood plain" means land that:

114 (a) is within the 100-year flood plain designated by the Federal Emergency
115 Management Agency; or

116 (b) has not been studied or designated by the Federal Emergency Management Agency
117 but presents a likelihood of experiencing chronic flooding or a catastrophic flood event because
118 the land has characteristics that are similar to those of a 100-year flood plain designated by the
119 Federal Emergency Management Agency.

120 [~~(14)~~] (15) "General plan" means a document that a municipality adopts that sets forth

121 general guidelines for proposed future development of the land within the municipality.

122 ~~[(15)]~~ (16) "Geologic hazard" means:

123 (a) a surface fault rupture;

124 (b) shallow groundwater;

125 (c) liquefaction;

126 (d) a landslide;

127 (e) a debris flow;

128 (f) unstable soil;

129 (g) a rock fall; or

130 (h) any other geologic condition that presents a risk:

131 (i) to life;

132 (ii) of substantial loss of real property; or

133 (iii) of substantial damage to real property.

134 ~~[(16)]~~ (17) "Hookup fee" means a fee for the installation and inspection of any pipe,

135 line, meter, or appurtenance that connects to a municipal water, sewer, storm water, power, or

136 other utility system.

137 ~~[(17)]~~ (18) "Identical plans" means building plans submitted to a municipality that:

138 (a) are clearly marked as "identical plans";

139 (b) are substantially identical to building plans that were previously submitted to and
140 reviewed and approved by the municipality; and

141 (c) describe a building that [is]:

142 ~~[(a)]~~ (i) is located on land zoned the same as the land on which the building described
143 in the previously approved plans is located; ~~[and]~~

144 ~~[(b)]~~ (ii) is subject to the same geological and meteorological conditions and the same
145 law as the building described in the previously approved plans[-];

146 (iii) has a floor plan identical to the building plan previously submitted to and reviewed
147 and approved by the municipality; and

148 (iv) does not require any additional engineering or analysis.

149 ~~[(18)]~~ (19) "Impact fee" means a payment of money imposed under Title 11, Chapter
150 36, Impact Fees Act.

151 ~~[(19)]~~ (20) "Improvement assurance" means a surety bond, letter of credit, cash, or

152 other security:

153 (a) to guaranty the proper completion of an improvement;

154 (b) that is required as a condition precedent to:

155 (i) recording a subdivision plat; or

156 (ii) beginning development activity; and

157 (c) that is offered to a land use authority to induce the land use authority, before actual
158 construction of required improvements, to:

159 (i) consent to the recording of a subdivision plat; or

160 (ii) issue a permit for development activity.

161 [~~20~~] (21) "Improvement assurance warranty" means a promise that the materials and
162 workmanship of improvements:

163 (a) comport with standards that the municipality has officially adopted; and

164 (b) will not fail in any material respect within a warranty period.

165 [~~21~~] (22) "Internal lot restriction" means a platted note, platted demarcation, or
166 platted designation that:

167 (a) runs with the land; and

168 (b) (i) creates a restriction that is enclosed within the perimeter of a lot described on
169 the plat; or

170 (ii) designates a development condition that is enclosed within the perimeter of a lot
171 described on the plat.

172 [~~22~~] (23) "Land use application" means an application required by a municipality's
173 land use ordinance.

174 [~~23~~] (24) "Land use authority" means a person, board, commission, agency, or other
175 body designated by the local legislative body to act upon a land use application.

176 [~~24~~] (25) "Land use ordinance" means a planning, zoning, development, or
177 subdivision ordinance of the municipality, but does not include the general plan.

178 [~~25~~] (26) "Land use permit" means a permit issued by a land use authority.

179 [~~26~~] (27) "Legislative body" means the municipal council.

180 [~~27~~] (28) "Local district" means an entity under Title 17B, Limited Purpose Local
181 Government Entities - Local Districts, and any other governmental or quasi-governmental
182 entity that is not a county, municipality, school district, or the state.

183 [~~(28)~~] (29) "Lot line adjustment" means the relocation of the property boundary line in
184 a subdivision between two adjoining lots with the consent of the owners of record.

185 [~~(29)~~] (30) "Moderate income housing" means housing occupied or reserved for
186 occupancy by households with a gross household income equal to or less than 80% of the
187 median gross income for households of the same size in the county in which the city is located.

188 [~~(30)~~] (31) "Nominal fee" means a fee that reasonably reimburses a municipality only
189 for time spent and expenses incurred in:

190 (a) verifying that building plans are identical plans; and

191 (b) reviewing and approving those minor aspects of identical plans that differ from the
192 previously reviewed and approved building plans.

193 [~~(31)~~] (32) "Noncomplying structure" means a structure that:

194 (a) legally existed before its current land use designation; and

195 (b) because of one or more subsequent land use ordinance changes, does not conform
196 to the setback, height restrictions, or other regulations, excluding those regulations, which
197 govern the use of land.

198 [~~(32)~~] (33) "Nonconforming use" means a use of land that:

199 (a) legally existed before its current land use designation;

200 (b) has been maintained continuously since the time the land use ordinance governing
201 the land changed; and

202 (c) because of one or more subsequent land use ordinance changes, does not conform
203 to the regulations that now govern the use of the land.

204 [~~(33)~~] (34) "Official map" means a map drawn by municipal authorities and recorded in
205 a county recorder's office that:

206 (a) shows actual and proposed rights-of-way, centerline alignments, and setbacks for
207 highways and other transportation facilities;

208 (b) provides a basis for restricting development in designated rights-of-way or between
209 designated setbacks to allow the government authorities time to purchase or otherwise reserve
210 the land; and

211 (c) has been adopted as an element of the municipality's general plan.

212 [~~(34)~~] (35) "Person" means an individual, corporation, partnership, organization,
213 association, trust, governmental agency, or any other legal entity.

214 [~~(35)~~] (36) "Plan for moderate income housing" means a written document adopted by
215 a city legislative body that includes:

216 (a) an estimate of the existing supply of moderate income housing located within the
217 city;

218 (b) an estimate of the need for moderate income housing in the city for the next five
219 years as revised biennially;

220 (c) a survey of total residential land use;

221 (d) an evaluation of how existing land uses and zones affect opportunities for moderate
222 income housing; and

223 (e) a description of the city's program to encourage an adequate supply of moderate
224 income housing.

225 [~~(36)~~] (37) "Plat" means a map or other graphical representation of lands being laid out
226 and prepared in accordance with Section 10-9a-603, 17-23-17, or 57-8-13.

227 [~~(37)~~] (38) "Potential geologic hazard area" means an area that:

228 (a) is designated by a Utah Geological Survey map, county geologist map, or other
229 relevant map or report as needing further study to determine the area's potential for geologic
230 hazard; or

231 (b) has not been studied by the Utah Geological Survey or a county geologist but
232 presents the potential of geologic hazard because the area has characteristics similar to those of
233 a designated geologic hazard area.

234 [~~(38)~~] (39) "Public agency" means:

235 (a) the federal government;

236 (b) the state;

237 (c) a county, municipality, school district, local district, special service district, or other
238 political subdivision of the state; or

239 (d) a charter school.

240 [~~(39)~~] (40) "Public hearing" means a hearing at which members of the public are
241 provided a reasonable opportunity to comment on the subject of the hearing.

242 [~~(40)~~] (41) "Public meeting" means a meeting that is required to be open to the public
243 under Title 52, Chapter 4, Open and Public Meetings Act.

244 [~~(41)~~] (42) "Record of survey map" means a map of a survey of land prepared in

245 accordance with Section 17-23-17.

246 [~~(42)~~] (43) "Receiving zone" means an area of a municipality that the municipality's
247 land use authority designates as an area in which an owner of land may receive transferrable
248 development rights.

249 [~~(43)~~] (44) "Residential facility for elderly persons" means a single-family or
250 multiple-family dwelling unit that meets the requirements of Section 10-9a-516, but does not
251 include a health care facility as defined by Section 26-21-2.

252 [~~(44)~~] (45) "Residential facility for persons with a disability" means a residence:

253 (a) in which more than one person with a disability resides; and

254 (b) (i) is licensed or certified by the Department of Human Services under Title 62A,
255 Chapter 2, Licensure of Programs and Facilities; or

256 (ii) is licensed or certified by the Department of Health under Title 26, Chapter 21,
257 Health Care Facility Licensing and Inspection Act.

258 [~~(45)~~] (46) "Sanitary sewer authority" means the department, agency, or public entity
259 with responsibility to review and approve the feasibility of sanitary sewer services or onsite
260 wastewater systems.

261 [~~(46)~~] (47) "Sending zone" means an area of a municipality that the municipality's land
262 use authority designates as an area from which an owner of land may transfer transferrable
263 development rights to an owner of land in a receiving zone.

264 [~~(47)~~] (48) "Specified public agency" means:

265 (a) the state;

266 (b) a school district; or

267 (c) a charter school.

268 [~~(48)~~] (49) "Specified public utility" means an electrical corporation, gas corporation,
269 or telephone corporation, as those terms are defined in Section 54-2-1.

270 [~~(49)~~] (50) "State" includes any department, division, or agency of the state.

271 [~~(50)~~] (51) "Street" means a public right-of-way, including a highway, avenue,
272 boulevard, parkway, road, lane, walk, alley, viaduct, subway, tunnel, bridge, public easement,
273 or other way.

274 [~~(51)~~] (52) (a) "Subdivision" means any land that is divided, resubdivided or proposed
275 to be divided into two or more lots, parcels, sites, units, plots, or other division of land for the

276 purpose, whether immediate or future, for offer, sale, lease, or development either on the
277 installment plan or upon any and all other plans, terms, and conditions.

278 (b) "Subdivision" includes:

279 (i) the division or development of land whether by deed, metes and bounds description,
280 devise and testacy, map, plat, or other recorded instrument; and

281 (ii) except as provided in Subsection [~~51~~] (52)(c), divisions of land for residential and
282 nonresidential uses, including land used or to be used for commercial, agricultural, and
283 industrial purposes.

284 (c) "Subdivision" does not include:

285 (i) a bona fide division or partition of agricultural land for the purpose of joining one of
286 the resulting separate parcels to a contiguous parcel of unsubdivided agricultural land, if
287 neither the resulting combined parcel nor the parcel remaining from the division or partition
288 violates an applicable land use ordinance;

289 (ii) a recorded agreement between owners of adjoining unsubdivided properties
290 adjusting their mutual boundary if:

291 (A) no new lot is created; and

292 (B) the adjustment does not violate applicable land use ordinances;

293 (iii) a recorded document, executed by the owner of record:

294 (A) revising the legal description of more than one contiguous unsubdivided parcel of
295 property into one legal description encompassing all such parcels of property; or

296 (B) joining a subdivided parcel of property to another parcel of property that has not
297 been subdivided, if the joinder does not violate applicable land use ordinances;

298 (iv) a recorded agreement between owners of adjoining subdivided properties adjusting
299 their mutual boundary if:

300 (A) no new dwelling lot or housing unit will result from the adjustment; and

301 (B) the adjustment will not violate any applicable land use ordinance; or

302 (v) a bona fide division or partition of land by deed or other instrument where the land
303 use authority expressly approves in writing the division in anticipation of further land use
304 approvals on the parcel or parcels.

305 (d) The joining of a subdivided parcel of property to another parcel of property that has
306 not been subdivided does not constitute a subdivision under this Subsection [~~51~~] (52) as to

307 the unsubdivided parcel of property or subject the unsubdivided parcel to the municipality's
308 subdivision ordinance.

309 [~~(52)~~] (53) "Transferrable development right" means the entitlement to develop land
310 within a sending zone that would vest according to the municipality's existing land use
311 ordinances on the date that a completed land use application is filed seeking the approval of
312 development activity on the land.

313 [~~(53)~~] (54) "Unincorporated" means the area outside of the incorporated area of a city
314 or town.

315 [~~(54)~~] (55) "Water interest" means any right to the beneficial use of water, including:

- 316 (a) each of the rights listed in Section 73-1-11; and
- 317 (b) an ownership interest in the right to the beneficial use of water represented by:
 - 318 (i) a contract; or
 - 319 (ii) a share in a water company, as defined in Section 73-3-3.5.

320 [~~(55)~~] (56) "Zoning map" means a map, adopted as part of a land use ordinance, that
321 depicts land use zones, overlays, or districts.

322 Section 2. Section **10-9a-305** is amended to read:

323 **10-9a-305. Other entities required to conform to municipality's land use**
324 **ordinances -- Exceptions -- School districts and charter schools -- Submission of**
325 **development plan and schedule.**

326 (1) (a) Each county, municipality, school district, charter school, local district, special
327 service district, and political subdivision of the state shall conform to any applicable land use
328 ordinance of any municipality when installing, constructing, operating, or otherwise using any
329 area, land, or building situated within that municipality.

330 (b) In addition to any other remedies provided by law, when a municipality's land use
331 ordinance is violated or about to be violated by another political subdivision, that municipality
332 may institute an injunction, mandamus, abatement, or other appropriate action or proceeding to
333 prevent, enjoin, abate, or remove the improper installation, improvement, or use.

334 (2) (a) Notwithstanding Subsection (1), a public transit district under Title 17B,
335 Chapter 2a, Part 8, Public Transit District Act, is not required to conform to any applicable
336 land use ordinance of a municipality located within the boundaries of a county of the first class
337 when constructing a:

338 (i) rail fixed guideway public transit facility that extends across two or more counties;

339 or

340 (ii) structure that serves a rail fixed guideway public transit facility that extends across
341 two or more counties, including:

342 (A) platforms;

343 (B) passenger terminals or stations;

344 (C) park and ride facilities;

345 (D) maintenance facilities;

346 (E) all related utility lines, roadways, and other facilities serving the public transit
347 facility; or

348 (F) other auxiliary facilities.

349 (b) The exemption from municipal land use ordinances under this Subsection (2) does
350 not extend to any property not necessary for the construction or operation of a rail fixed
351 guideway public transit facility.

352 (c) A municipality located within the boundaries of a county of the first class may not,
353 through an agreement under Title 11, Chapter 13, Interlocal Cooperation Act, require a public
354 transit district under Title 17B, Chapter 2a, Part 8, Public Transit District Act, to obtain
355 approval from the municipality prior to constructing a:

356 (i) rail fixed guideway public transit facility that extends across two or more counties;

357 or

358 (ii) structure that serves a rail fixed guideway public transit facility that extends across
359 two or more counties, including:

360 (A) platforms;

361 (B) passenger terminals or stations;

362 (C) park and ride facilities;

363 (D) maintenance facilities;

364 (E) all related utility lines, roadways, and other facilities serving the public transit
365 facility; or

366 (F) other auxiliary facilities.

367 (3) (a) Except as provided in Subsection (4), a school district or charter school is
368 subject to a municipality's land use ordinances.

369 (b) (i) Notwithstanding Subsection (4), a municipality may:
370 (A) subject a charter school to standards within each zone pertaining to setback, height,
371 bulk and massing regulations, off-site parking, curb cut, traffic circulation, and construction
372 staging; and
373 (B) impose regulations upon the location of a project that are necessary to avoid
374 unreasonable risks to health or safety, as provided in Subsection (4)(f).
375 (ii) The standards to which a municipality may subject a charter school under
376 Subsection (3)(b)(i) shall be objective standards only and may not be subjective.
377 (iii) Except as provided in Subsection (8)(d), the only basis upon which a municipality
378 may deny or withhold approval of a charter school's land use application is the charter school's
379 failure to comply with a standard imposed under Subsection (3)(b)(i).
380 (iv) Nothing in Subsection (3)(b)(iii) may be construed to relieve a charter school of an
381 obligation to comply with a requirement of an applicable building or safety code to which it is
382 otherwise obligated to comply.
383 (4) A municipality may not:
384 (a) impose requirements for landscaping, fencing, aesthetic considerations,
385 construction methods or materials, additional building inspections, municipal building codes,
386 building use for educational purposes, or the placement or use of temporary classroom facilities
387 on school property;
388 (b) except as otherwise provided in this section, require a school district or charter
389 school to participate in the cost of any roadway or sidewalk, or a study on the impact of a
390 school on a roadway or sidewalk, that is not reasonably necessary for the safety of school
391 children and not located on or contiguous to school property, unless the roadway or sidewalk is
392 required to connect an otherwise isolated school site to an existing roadway;
393 (c) require a district or charter school to pay fees not authorized by this section;
394 (d) provide for inspection of school construction or assess a fee or other charges for
395 inspection, unless the school district or charter school is unable to provide for inspection by an
396 inspector, other than the project architect or contractor, who is qualified under criteria
397 established by the state superintendent;
398 (e) require a school district or charter school to pay any impact fee for an improvement
399 project unless the impact fee is imposed as provided in Title 11, Chapter 36, Impact Fees Act;

400 (f) impose regulations upon the location of an educational facility except as necessary
401 to avoid unreasonable risks to health or safety; or

402 (g) for a land use or a structure owned or operated by a school district or charter school
403 that is not an educational facility but is used in support of providing instruction to pupils,
404 impose a regulation that:

405 (i) is not imposed on a similar land use or structure in the zone in which the land use or
406 structure is approved; or

407 (ii) uses the tax exempt status of the school district or charter school as criteria for
408 prohibiting or regulating the land use or location of the structure.

409 (5) Subject to Section 53A-20-108, a school district or charter school shall coordinate
410 the siting of a new school with the municipality in which the school is to be located, to:

411 (a) avoid or mitigate existing and potential traffic hazards, including consideration of
412 the impacts between the new school and future highways; and

413 (b) maximize school, student, and site safety.

414 (6) Notwithstanding Subsection (4)(d), a municipality may, at its discretion:

415 (a) provide a walk-through of school construction at no cost and at a time convenient to
416 the district or charter school; and

417 (b) provide recommendations based upon the walk-through.

418 (7) (a) Notwithstanding Subsection (4)(d), a school district or charter school shall use:

419 (i) a municipal building inspector;

420 (ii) (A) for a school district, a school district building inspector from that school
421 district; or

422 (B) for a charter school, a school district building inspector from the school district in
423 which the charter school is located; or

424 (iii) an independent, certified building inspector who is:

425 (A) not an employee of the contractor;

426 (B) approved by:

427 (I) a municipal building inspector; or

428 (II) (Aa) for a school district, a school district building inspector from that school
429 district; or

430 (Bb) for a charter school, a school district building inspector from the school district in

431 which the charter school is located; and

432 (C) licensed to perform the inspection that the inspector is requested to perform.

433 (b) The approval under Subsection (7)(a)(iii)(B) may not be unreasonably withheld.

434 (c) If a school district or charter school uses a school district or independent building
435 inspector under Subsection (7)(a)(ii) or (iii), the school district or charter school shall submit to
436 the state superintendent of public instruction and municipal building official, on a monthly
437 basis during construction of the school building, a copy of each inspection certificate regarding
438 the school building.

439 (8) (a) A charter school shall be considered a permitted use in all zoning districts
440 within a municipality.

441 (b) Each land use application for any approval required for a charter school, including
442 an application for a building permit, shall be processed on a first priority basis.

443 (c) Parking requirements for a charter school may not exceed the minimum parking
444 requirements for schools or other institutional public uses throughout the municipality.

445 (d) If a municipality has designated zones for a sexually oriented business, or a
446 business which sells alcohol, a charter school may be prohibited from a location which would
447 otherwise defeat the purpose for the zone unless the charter school provides a waiver.

448 (e) (i) A school district or a charter school may seek a certificate authorizing permanent
449 occupancy of a school building from:

450 (A) the state superintendent of public instruction, as provided in Subsection
451 53A-20-104(3), if the school district or charter school used an independent building inspector
452 for inspection of the school building; or

453 (B) a municipal official with authority to issue the certificate, if the school district or
454 charter school used a municipal building inspector for inspection of the school building.

455 (ii) A school district may issue its own certificate authorizing permanent occupancy of
456 a school building if it used its own building inspector for inspection of the school building,
457 subject to the notification requirement of Subsection 53A-20-104(3)(a)(ii).

458 (iii) A charter school may seek a certificate authorizing permanent occupancy of a
459 school building from a school district official with authority to issue the certificate, if the
460 charter school used a school district building inspector for inspection of the school building.

461 (iv) A certificate authorizing permanent occupancy issued by the state superintendent

462 of public instruction under Subsection 53A-20-104(3) or a school district official with authority
463 to issue the certificate shall be considered to satisfy any municipal requirement for an
464 inspection or a certificate of occupancy.

465 (9) (a) A specified public agency intending to develop its land shall submit to the land
466 use authority a development plan and schedule:

467 (i) as early as practicable in the development process, but no later than the
468 commencement of construction; and

469 (ii) with sufficient detail to enable the land use authority to assess:

470 (A) the specified public agency's compliance with applicable land use ordinances;

471 (B) the demand for public facilities listed in Subsections 11-36-102(14)(a), (b), (c), (d),
472 (e), and (g) caused by the development;

473 (C) the amount of any applicable fee [~~listed in Subsection 10-9a-510(5)~~] described in
474 Section 10-9a-510;

475 (D) any credit against an impact fee; and

476 (E) the potential for waiving an impact fee.

477 (b) The land use authority shall respond to a specified public agency's submission
478 under Subsection (9)(a) with reasonable promptness in order to allow the specified public
479 agency to consider information the municipality provides under Subsection (9)(a)(ii) in the
480 process of preparing the budget for the development.

481 (10) Nothing in this section may be construed to modify or supersede Section
482 10-9a-304.

483 Section 3. Section **10-9a-510** is amended to read:

484 **10-9a-510. Limit on fees -- Requirement to itemize fees -- Appeal of fee --**
485 **Provider of culinary or secondary water.**

486 (1) A municipality may not impose or collect a fee for reviewing or approving the
487 plans for a commercial or residential building that exceeds the lesser of:

488 (a) the actual cost of performing the plan review; and

489 (b) 65% of the amount the municipality charges for a building permit fee for that
490 building.

491 (2) Subject to Subsection (1), a municipality may impose and collect only a nominal
492 fee for reviewing and approving identical floor plans.

493 (3) A municipality may not impose or collect a hookup fee that exceeds the reasonable
494 cost of installing and inspecting the pipe, line, meter, and appurtenance to connect to the
495 municipal water, sewer, storm water, power, or other utility system.

496 (4) A municipality may not impose or collect:

497 (a) a land use application fee that exceeds the reasonable cost of processing the
498 application or issuing the permit; or

499 (b) an inspection, regulation, or review fee that exceeds the reasonable cost of
500 performing the inspection, regulation, or review.

501 (5) ~~(a) [Upon the request of]~~ If requested by an applicant who is charged a fee or an
502 owner of residential property upon which a fee is imposed, the municipality shall [itemize each
503 fee that the municipality imposes on the applicant or on the residential property, respectively,
504 showing the basis of each calculation for each fee imposed] provide an itemized fee statement
505 that shows the calculation method for each fee.

506 (b) If an applicant who is charged a fee or an owner of residential property upon which
507 a fee is imposed submits a request for an itemized fee statement no later than 30 days after the
508 day on which the applicant or owner pays the fee, the municipality shall no later than 10 days
509 after the day on which the request is received provide or commit to provide within a specific
510 time:

511 (i) for each fee, any studies, reports, or methods relied upon by the municipality to
512 create the calculation method described in Subsection (5)(a);

513 (ii) an accounting of each fee paid;

514 (iii) how each fee will be distributed; and

515 (iv) information on filing a fee appeal through the process described in Subsection
516 (5)(c).

517 (c) A municipality shall establish a fee appeal process subject to an appeal authority
518 described in Part 7, Appeal Authority and Variances, and district court review in accordance
519 with Part 8, District Court Review, to determine whether a fee reflects only the reasonable
520 estimated cost of:

521 (i) regulation;

522 (ii) processing an application;

523 (iii) issuing a permit; or

524 (iv) delivering the service for which the applicant or owner paid the fee.

525 (6) A municipality may not impose on or collect from a public agency any fee
526 associated with the public agency's development of its land other than:

527 (a) subject to Subsection (4), a fee for a development service that the public agency
528 does not itself provide;

529 (b) subject to Subsection (3), a hookup fee; and

530 (c) an impact fee for a public facility listed in Subsection 11-36-102(14)(a), (b), (c),
531 (d), (e), or (g), subject to any applicable credit under Subsection 11-36-202(2)(b).

532 (7) A provider of culinary or secondary water that commits to provide a water service
533 required by a public land use application process is subject to the following as if it were a
534 municipality:

535 (a) Subsections (5) and (6);

536 (b) Section 10-9a-508; and

537 (c) Section 10-9a-509.5.

538 Section 4. Section **10-9a-701** is amended to read:

539 **10-9a-701. Appeal authority required -- Condition precedent to judicial review --**

540 **Appeal authority duties.**

541 (1) Each municipality adopting a land use ordinance shall, by ordinance, establish one
542 or more appeal authorities to hear and decide:

543 (a) requests for variances from the terms of the land use ordinances; [~~and~~]

544 (b) appeals from decisions applying the land use ordinances[~~;~~]; and

545 (c) appeals from a fee charged in accordance with Section 10-9a-510.

546 (2) As a condition precedent to judicial review, each adversely affected person shall
547 timely and specifically challenge a land use authority's decision, in accordance with local
548 ordinance.

549 (3) An appeal authority:

550 (a) shall:

551 (i) act in a quasi-judicial manner; and

552 (ii) serve as the final arbiter of issues involving the interpretation or application of land
553 use ordinances; and

554 (b) may not entertain an appeal of a matter in which the appeal authority, or any

555 participating member, had first acted as the land use authority.

556 (4) By ordinance, a municipality may:

557 (a) designate a separate appeal authority to hear requests for variances than the appeal
558 authority it designates to hear appeals;

559 (b) designate one or more separate appeal authorities to hear distinct types of appeals
560 of land use authority decisions;

561 (c) require an adversely affected party to present to an appeal authority every theory of
562 relief that it can raise in district court;

563 (d) not require an adversely affected party to pursue duplicate or successive appeals
564 before the same or separate appeal authorities as a condition of the adversely affected party's
565 duty to exhaust administrative remedies; and

566 (e) provide that specified types of land use decisions may be appealed directly to the
567 district court.

568 (5) If the municipality establishes or, prior to the effective date of this chapter, has
569 established a multiperson board, body, or panel to act as an appeal authority, at a minimum the
570 board, body, or panel shall:

571 (a) notify each of its members of any meeting or hearing of the board, body, or panel;

572 (b) provide each of its members with the same information and access to municipal
573 resources as any other member;

574 (c) convene only if a quorum of its members is present; and

575 (d) act only upon the vote of a majority of its convened members.

576 Section 5. Section **17-27a-103** is amended to read:

577 **17-27a-103. Definitions.**

578 As used in this chapter:

579 (1) "Affected entity" means a county, municipality, local district, special service
580 district under Title 17D, Chapter 1, Special Service District Act, school district, interlocal
581 cooperation entity established under Title 11, Chapter 13, Interlocal Cooperation Act, specified
582 property owner, property owners association, public utility, or the Utah Department of
583 Transportation, if:

584 (a) the entity's services or facilities are likely to require expansion or significant
585 modification because of an intended use of land;

586 (b) the entity has filed with the county a copy of the entity's general or long-range plan;
587 or

588 (c) the entity has filed with the county a request for notice during the same calendar
589 year and before the county provides notice to an affected entity in compliance with a
590 requirement imposed under this chapter.

591 (2) "Appeal authority" means the person, board, commission, agency, or other body
592 designated by ordinance to decide an appeal of a decision of a land use application or a
593 variance.

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

597 (4) "Building permit fee" means any fee charged to enforce the uniform codes adopted
598 pursuant to Title 58, Chapter 56, Utah Uniform Building Standards Act, that is no greater than
599 a fee indicated in the appendix to the International Building Code.

600 [~~4~~] (5) "Charter school" includes:

601 (a) an operating charter school;

602 (b) a charter school applicant that has its application approved by a chartering entity in
603 accordance with Title 53A, Chapter 1a, Part 5, The Utah Charter Schools Act; and

604 (c) an entity who is working on behalf of a charter school or approved charter applicant
605 to develop or construct a charter school building.

606 [~~5~~] (6) "Chief executive officer" means the person or body that exercises the
607 executive powers of the county.

608 [~~6~~] (7) "Conditional use" means a land use that, because of its unique characteristics
609 or potential impact on the county, surrounding neighbors, or adjacent land uses, may not be
610 compatible in some areas or may be compatible only if certain conditions are required that
611 mitigate or eliminate the detrimental impacts.

612 [~~7~~] (8) "Constitutional taking" means a governmental action that results in a taking of
613 private property so that compensation to the owner of the property is required by the:

614 (a) Fifth or Fourteenth Amendment of the Constitution of the United States; or

615 (b) Utah Constitution Article I, Section 22.

616 [~~8~~] (9) "Culinary water authority" means the department, agency, or public entity with

617 responsibility to review and approve the feasibility of the culinary water system and sources for
618 the subject property.

619 ~~[(9)]~~ (10) "Development activity" means:

620 (a) any construction or expansion of a building, structure, or use that creates additional
621 demand and need for public facilities;

622 (b) any change in use of a building or structure that creates additional demand and need
623 for public facilities; or

624 (c) any change in the use of land that creates additional demand and need for public
625 facilities.

626 ~~[(10)]~~ (11) (a) "Disability" means a physical or mental impairment that substantially
627 limits one or more of a person's major life activities, including a person having a record of such
628 an impairment or being regarded as having such an impairment.

629 (b) "Disability" does not include current illegal use of, or addiction to, any federally
630 controlled substance, as defined in Section 102 of the Controlled Substances Act, 21 U.S.C.
631 802.

632 ~~[(11)]~~ (12) "Educational facility":

633 (a) means:

634 (i) a school district's building at which pupils assemble to receive instruction in a
635 program for any combination of grades from preschool through grade 12, including
636 kindergarten and a program for children with disabilities;

637 (ii) a structure or facility:

638 (A) located on the same property as a building described in Subsection ~~[(11)]~~

639 (12)(a)(i); and

640 (B) used in support of the use of that building; and

641 (iii) a building to provide office and related space to a school district's administrative
642 personnel; and

643 (b) does not include land or a structure, including land or a structure for inventory
644 storage, equipment storage, food processing or preparing, vehicle storage or maintenance, or
645 similar use that is:

646 (i) not located on the same property as a building described in Subsection ~~[(11)]~~

647 (12)(a)(i); and

648 (ii) used in support of the purposes of a building described in Subsection [~~(H)~~]
649 (12)(a)(i).

650 [~~(12)~~] (13) "Elderly person" means a person who is 60 years old or older, who desires
651 or needs to live with other elderly persons in a group setting, but who is capable of living
652 independently.

653 [~~(13)~~] (14) "Fire authority" means the department, agency, or public entity with
654 responsibility to review and approve the feasibility of fire protection and suppression services
655 for the subject property.

656 [~~(14)~~] (15) "Flood plain" means land that:

657 (a) is within the 100-year flood plain designated by the Federal Emergency
658 Management Agency; or

659 (b) has not been studied or designated by the Federal Emergency Management Agency
660 but presents a likelihood of experiencing chronic flooding or a catastrophic flood event because
661 the land has characteristics that are similar to those of a 100-year flood plain designated by the
662 Federal Emergency Management Agency.

663 [~~(15)~~] (16) "Gas corporation" has the same meaning as defined in Section 54-2-1.

664 [~~(16)~~] (17) "General plan" means a document that a county adopts that sets forth
665 general guidelines for proposed future development of the unincorporated land within the
666 county.

667 [~~(17)~~] (18) "Geologic hazard" means:

668 (a) a surface fault rupture;

669 (b) shallow groundwater;

670 (c) liquefaction;

671 (d) a landslide;

672 (e) a debris flow;

673 (f) unstable soil;

674 (g) a rock fall; or

675 (h) any other geologic condition that presents a risk:

676 (i) to life;

677 (ii) of substantial loss of real property; or

678 (iii) of substantial damage to real property.

679 ~~[(18)]~~ (19) "Internal lot restriction" means a platted note, platted demarcation, or
680 platted designation that:

681 (a) runs with the land; and

682 (b) (i) creates a restriction that is enclosed within the perimeter of a lot described on
683 the plat; or

684 (ii) designates a development condition that is enclosed within the perimeter of a lot
685 described on the plat.

686 ~~[(19)]~~ (20) "Hookup fee" means a fee for the installation and inspection of any pipe,
687 line, meter, or appurtenance to connect to a county water, sewer, storm water, power, or other
688 utility system.

689 ~~[(20)]~~ (21) "Identical plans" means building plans submitted to a county that:

690 (a) are clearly marked as "identical plans";

691 (b) are substantially identical building plans that were previously submitted to and
692 reviewed and approved by the county; and

693 (c) describe a building that ~~is~~:

694 ~~[(a)]~~ (i) is located on land zoned the same as the land on which the building described
695 in the previously approved plans is located; ~~and]~~

696 ~~[(b)]~~ (ii) is subject to the same geological and meteorological conditions and the same
697 law as the building described in the previously approved plans~~[-]~~;

698 (iii) has a floor plan identical to the building plan previously submitted to and reviewed
699 and approved by the county; and

700 (iv) does not require any additional engineering or analysis.

701 ~~[(21)]~~ (22) "Impact fee" means a payment of money imposed under Title 11, Chapter
702 36, Impact Fees Act.

703 ~~[(22)]~~ (23) "Improvement assurance" means a surety bond, letter of credit, cash, or
704 other security:

705 (a) to guaranty the proper completion of an improvement;

706 (b) that is required as a condition precedent to:

707 (i) recording a subdivision plat; or

708 (ii) beginning development activity; and

709 (c) that is offered to a land use authority to induce the land use authority, before actual

710 construction of required improvements, to:

711 (i) consent to the recording of a subdivision plat; or

712 (ii) issue a permit for development activity.

713 [~~23~~] (24) "Improvement assurance warranty" means a promise that the materials and
714 workmanship of improvements:

715 (a) comport with standards that the county has officially adopted; and

716 (b) will not fail in any material respect within a warranty period.

717 [~~24~~] (25) "Interstate pipeline company" means a person or entity engaged in natural
718 gas transportation subject to the jurisdiction of the Federal Energy Regulatory Commission
719 under the Natural Gas Act, 15 U.S.C. Sec. 717 et seq.

720 [~~25~~] (26) "Intrastate pipeline company" means a person or entity engaged in natural
721 gas transportation that is not subject to the jurisdiction of the Federal Energy Regulatory
722 Commission under the Natural Gas Act, 15 U.S.C. Sec. 717 et seq.

723 [~~26~~] (27) "Land use application" means an application required by a county's land use
724 ordinance.

725 [~~27~~] (28) "Land use authority" means a person, board, commission, agency, or other
726 body designated by the local legislative body to act upon a land use application.

727 [~~28~~] (29) "Land use ordinance" means a planning, zoning, development, or
728 subdivision ordinance of the county, but does not include the general plan.

729 [~~29~~] (30) "Land use permit" means a permit issued by a land use authority.

730 [~~30~~] (31) "Legislative body" means the county legislative body, or for a county that
731 has adopted an alternative form of government, the body exercising legislative powers.

732 [~~31~~] (32) "Local district" means any entity under Title 17B, Limited Purpose Local
733 Government Entities - Local Districts, and any other governmental or quasi-governmental
734 entity that is not a county, municipality, school district, or the state.

735 [~~32~~] (33) "Lot line adjustment" means the relocation of the property boundary line in
736 a subdivision between two adjoining lots with the consent of the owners of record.

737 [~~33~~] (34) "Moderate income housing" means housing occupied or reserved for
738 occupancy by households with a gross household income equal to or less than 80% of the
739 median gross income for households of the same size in the county in which the housing is
740 located.

741 [~~(34)~~] (35) "Nominal fee" means a fee that reasonably reimburses a county only for
742 time spent and expenses incurred in:

743 (a) verifying that building plans are identical plans; and

744 (b) reviewing and approving those minor aspects of identical plans that differ from the
745 previously reviewed and approved building plans.

746 [~~(35)~~] (36) "Noncomplying structure" means a structure that:

747 (a) legally existed before its current land use designation; and

748 (b) because of one or more subsequent land use ordinance changes, does not conform
749 to the setback, height restrictions, or other regulations, excluding those regulations that govern
750 the use of land.

751 [~~(36)~~] (37) "Nonconforming use" means a use of land that:

752 (a) legally existed before its current land use designation;

753 (b) has been maintained continuously since the time the land use ordinance regulation
754 governing the land changed; and

755 (c) because of one or more subsequent land use ordinance changes, does not conform
756 to the regulations that now govern the use of the land.

757 [~~(37)~~] (38) "Official map" means a map drawn by county authorities and recorded in
758 the county recorder's office that:

759 (a) shows actual and proposed rights-of-way, centerline alignments, and setbacks for
760 highways and other transportation facilities;

761 (b) provides a basis for restricting development in designated rights-of-way or between
762 designated setbacks to allow the government authorities time to purchase or otherwise reserve
763 the land; and

764 (c) has been adopted as an element of the county's general plan.

765 [~~(38)~~] (39) "Person" means an individual, corporation, partnership, organization,
766 association, trust, governmental agency, or any other legal entity.

767 [~~(39)~~] (40) "Plan for moderate income housing" means a written document adopted by
768 a county legislative body that includes:

769 (a) an estimate of the existing supply of moderate income housing located within the
770 county;

771 (b) an estimate of the need for moderate income housing in the county for the next five

772 years as revised biennially;

773 (c) a survey of total residential land use;

774 (d) an evaluation of how existing land uses and zones affect opportunities for moderate
775 income housing; and

776 (e) a description of the county's program to encourage an adequate supply of moderate
777 income housing.

778 [~~(40)~~] (41) "Plat" means a map or other graphical representation of lands being laid out
779 and prepared in accordance with Section 17-27a-603, 17-23-17, or 57-8-13.

780 [~~(41)~~] (42) "Potential geologic hazard area" means an area that:

781 (a) is designated by a Utah Geological Survey map, county geologist map, or other
782 relevant map or report as needing further study to determine the area's potential for geologic
783 hazard; or

784 (b) has not been studied by the Utah Geological Survey or a county geologist but
785 presents the potential of geologic hazard because the area has characteristics similar to those of
786 a designated geologic hazard area.

787 [~~(42)~~] (43) "Public agency" means:

788 (a) the federal government;

789 (b) the state;

790 (c) a county, municipality, school district, local district, special service district, or other
791 political subdivision of the state; or

792 (d) a charter school.

793 [~~(43)~~] (44) "Public hearing" means a hearing at which members of the public are
794 provided a reasonable opportunity to comment on the subject of the hearing.

795 [~~(44)~~] (45) "Public meeting" means a meeting that is required to be open to the public
796 under Title 52, Chapter 4, Open and Public Meetings Act.

797 [~~(45)~~] (46) "Receiving zone" means an unincorporated area of a county that the
798 county's land use authority designates as an area in which an owner of land may receive
799 transferrable development rights.

800 [~~(46)~~] (47) "Record of survey map" means a map of a survey of land prepared in
801 accordance with Section 17-23-17.

802 [~~(47)~~] (48) "Residential facility for elderly persons" means a single-family or

803 multiple-family dwelling unit that meets the requirements of Section 17-27a-515, but does not
804 include a health care facility as defined by Section 26-21-2.

805 ~~[(48)]~~ (49) "Residential facility for persons with a disability" means a residence:

806 (a) in which more than one person with a disability resides; and

807 (b) (i) is licensed or certified by the Department of Human Services under Title 62A,
808 Chapter 2, Licensure of Programs and Facilities; or

809 (ii) is licensed or certified by the Department of Health under Title 26, Chapter 21,
810 Health Care Facility Licensing and Inspection Act.

811 ~~[(49)]~~ (50) "Sanitary sewer authority" means the department, agency, or public entity
812 with responsibility to review and approve the feasibility of sanitary sewer services or onsite
813 wastewater systems.

814 ~~[(50)]~~ (51) "Sending zone" means an unincorporated area of a county that the county's
815 land use authority designates as an area from which an owner of land may transfer transferrable
816 development rights to an owner of land in a receiving zone.

817 ~~[(51)]~~ (52) "Specified public agency" means:

818 (a) the state;

819 (b) a school district; or

820 (c) a charter school.

821 ~~[(52)]~~ (53) "Specified public utility" means an electrical corporation, gas corporation,
822 or telephone corporation, as those terms are defined in Section 54-2-1.

823 ~~[(53)]~~ (54) "State" includes any department, division, or agency of the state.

824 ~~[(54)]~~ (55) "Street" means a public right-of-way, including a highway, avenue,
825 boulevard, parkway, road, lane, walk, alley, viaduct, subway, tunnel, bridge, public easement,
826 or other way.

827 ~~[(55)]~~ (56) (a) "Subdivision" means any land that is divided, resubdivided or proposed
828 to be divided into two or more lots, parcels, sites, units, plots, or other division of land for the
829 purpose, whether immediate or future, for offer, sale, lease, or development either on the
830 installment plan or upon any and all other plans, terms, and conditions.

831 (b) "Subdivision" includes:

832 (i) the division or development of land whether by deed, metes and bounds description,
833 devise and testacy, map, plat, or other recorded instrument; and

834 (ii) except as provided in Subsection [~~(55)~~] (56)(c), divisions of land for residential and
835 nonresidential uses, including land used or to be used for commercial, agricultural, and
836 industrial purposes.

837 (c) "Subdivision" does not include:

838 (i) a bona fide division or partition of agricultural land for agricultural purposes;

839 (ii) a recorded agreement between owners of adjoining properties adjusting their
840 mutual boundary if:

841 (A) no new lot is created; and

842 (B) the adjustment does not violate applicable land use ordinances;

843 (iii) a recorded document, executed by the owner of record:

844 (A) revising the legal description of more than one contiguous unsubdivided parcel of
845 property into one legal description encompassing all such parcels of property; or

846 (B) joining a subdivided parcel of property to another parcel of property that has not
847 been subdivided, if the joinder does not violate applicable land use ordinances;

848 (iv) a bona fide division or partition of land in a county other than a first class county
849 for the purpose of siting, on one or more of the resulting separate parcels:

850 (A) an electrical transmission line or a substation;

851 (B) a natural gas pipeline or a regulation station; or

852 (C) an unmanned telecommunications, microwave, fiber optic, electrical, or other
853 utility service regeneration, transformation, retransmission, or amplification facility;

854 (v) a recorded agreement between owners of adjoining subdivided properties adjusting
855 their mutual boundary if:

856 (A) no new dwelling lot or housing unit will result from the adjustment; and

857 (B) the adjustment will not violate any applicable land use ordinance; or

858 (vi) a bona fide division or partition of land by deed or other instrument where the land
859 use authority expressly approves in writing the division in anticipation of further land use
860 approvals on the parcel or parcels.

861 (d) The joining of a subdivided parcel of property to another parcel of property that has
862 not been subdivided does not constitute a subdivision under this Subsection [~~(55)~~] (56) as to
863 the unsubdivided parcel of property or subject the unsubdivided parcel to the county's
864 subdivision ordinance.

865 [~~(56)~~] (57) "Township" means a contiguous, geographically defined portion of the
866 unincorporated area of a county, established under this part or reconstituted or reinstated under
867 Section 17-27a-306, with planning and zoning functions as exercised through the township
868 planning commission, as provided in this chapter, but with no legal or political identity
869 separate from the county and no taxing authority, except that "township" means a former
870 township under Laws of Utah 1996, Chapter 308, where the context so indicates.

871 [~~(57)~~] (58) "Transferrable development right" means the entitlement to develop land
872 within a sending zone that would vest according to the county's existing land use ordinances on
873 the date that a completed land use application is filed seeking the approval of development
874 activity on the land.

875 [~~(58)~~] (59) "Unincorporated" means the area outside of the incorporated area of a
876 municipality.

877 [~~(59)~~] (60) "Water interest" means any right to the beneficial use of water, including:

- 878 (a) each of the rights listed in Section 73-1-11; and
879 (b) an ownership interest in the right to the beneficial use of water represented by:
880 (i) a contract; or
881 (ii) a share in a water company, as defined in Section 73-3-3.5.

882 [~~(60)~~] (61) "Zoning map" means a map, adopted as part of a land use ordinance, that
883 depicts land use zones, overlays, or districts.

884 Section 6. Section **17-27a-305** is amended to read:

885 **17-27a-305. Other entities required to conform to county's land use ordinances --**
886 **Exceptions -- School districts and charter schools -- Submission of development plan and**
887 **schedule.**

888 (1) (a) Each county, municipality, school district, charter school, local district, special
889 service district, and political subdivision of the state shall conform to any applicable land use
890 ordinance of any county when installing, constructing, operating, or otherwise using any area,
891 land, or building situated within the unincorporated portion of the county.

892 (b) In addition to any other remedies provided by law, when a county's land use
893 ordinance is violated or about to be violated by another political subdivision, that county may
894 institute an injunction, mandamus, abatement, or other appropriate action or proceeding to
895 prevent, enjoin, abate, or remove the improper installation, improvement, or use.

896 (2) (a) Notwithstanding Subsection (1), a public transit district under Title 17B,
897 Chapter 2a, Part 8, Public Transit District Act, is not required to conform to any applicable
898 land use ordinance of a county of the first class when constructing a:

899 (i) rail fixed guideway public transit facility that extends across two or more counties;

900 or

901 (ii) structure that serves a rail fixed guideway public transit facility that extends across
902 two or more counties, including:

903 (A) platforms;

904 (B) passenger terminals or stations;

905 (C) park and ride facilities;

906 (D) maintenance facilities;

907 (E) all related utility lines, roadways, and other facilities serving the public transit
908 facility; or

909 (F) other auxiliary facilities.

910 (b) The exemption from county land use ordinances under this Subsection (2) does not
911 extend to any property not necessary for the construction or operation of a rail fixed guideway
912 public transit facility.

913 (c) A county of the first class may not, through an agreement under Title 11, Chapter
914 13, Interlocal Cooperation Act, require a public transit district under Title 17B, Chapter 2a,
915 Part 8, Public Transit District Act, to obtain approval from the county prior to constructing a:

916 (i) rail fixed guideway public transit facility that extends across two or more counties;

917 or

918 (ii) structure that serves a rail fixed guideway public transit facility that extends across
919 two or more counties, including:

920 (A) platforms;

921 (B) passenger terminals or stations;

922 (C) park and ride facilities;

923 (D) maintenance facilities;

924 (E) all related utility lines, roadways, and other facilities serving the public transit
925 facility; or

926 (F) other auxiliary facilities.

927 (3) (a) Except as provided in Subsection (4), a school district or charter school is
928 subject to a county's land use ordinances.

929 (b) (i) Notwithstanding Subsection (4), a county may:

930 (A) subject a charter school to standards within each zone pertaining to setback, height,
931 bulk and massing regulations, off-site parking, curb cut, traffic circulation, and construction
932 staging; and

933 (B) impose regulations upon the location of a project that are necessary to avoid
934 unreasonable risks to health or safety, as provided in Subsection (4)(f).

935 (ii) The standards to which a county may subject a charter school under Subsection
936 (3)(b)(i) shall be objective standards only and may not be subjective.

937 (iii) Except as provided in Subsection (8)(d), the only basis upon which a county may
938 deny or withhold approval of a charter school's land use application is the charter school's
939 failure to comply with a standard imposed under Subsection (3)(b)(i).

940 (iv) Nothing in Subsection (3)(b)(iii) may be construed to relieve a charter school of an
941 obligation to comply with a requirement of an applicable building or safety code to which it is
942 otherwise obligated to comply.

943 (4) A county may not:

944 (a) impose requirements for landscaping, fencing, aesthetic considerations,
945 construction methods or materials, additional building inspections, county building codes,
946 building use for educational purposes, or the placement or use of temporary classroom facilities
947 on school property;

948 (b) except as otherwise provided in this section, require a school district or charter
949 school to participate in the cost of any roadway or sidewalk, or a study on the impact of a
950 school on a roadway or sidewalk, that is not reasonably necessary for the safety of school
951 children and not located on or contiguous to school property, unless the roadway or sidewalk is
952 required to connect an otherwise isolated school site to an existing roadway;

953 (c) require a district or charter school to pay fees not authorized by this section;

954 (d) provide for inspection of school construction or assess a fee or other charges for
955 inspection, unless the school district or charter school is unable to provide for inspection by an
956 inspector, other than the project architect or contractor, who is qualified under criteria
957 established by the state superintendent;

958 (e) require a school district or charter school to pay any impact fee for an improvement
959 project unless the impact fee is imposed as provided in Title 11, Chapter 36, Impact Fees Act;

960 (f) impose regulations upon the location of an educational facility except as necessary
961 to avoid unreasonable risks to health or safety; or

962 (g) for a land use or a structure owned or operated by a school district or charter school
963 that is not an educational facility but is used in support of providing instruction to pupils,
964 impose a regulation that:

965 (i) is not imposed on a similar land use or structure in the zone in which the land use or
966 structure is approved; or

967 (ii) uses the tax exempt status of the school district or charter school as criteria for
968 prohibiting or regulating the land use or location of the structure.

969 (5) Subject to Section 53A-20-108, a school district or charter school shall coordinate
970 the siting of a new school with the county in which the school is to be located, to:

971 (a) avoid or mitigate existing and potential traffic hazards, including consideration of
972 the impacts between the new school and future highways; and

973 (b) maximize school, student, and site safety.

974 (6) Notwithstanding Subsection (4)(d), a county may, at its discretion:

975 (a) provide a walk-through of school construction at no cost and at a time convenient to
976 the district or charter school; and

977 (b) provide recommendations based upon the walk-through.

978 (7) (a) Notwithstanding Subsection (4)(d), a school district or charter school shall use:

979 (i) a county building inspector;

980 (ii) (A) for a school district, a school district building inspector from that school
981 district; or

982 (B) for a charter school, a school district building inspector from the school district in
983 which the charter school is located; or

984 (iii) an independent, certified building inspector who is:

985 (A) not an employee of the contractor;

986 (B) approved by:

987 (I) a county building inspector; or

988 (II) (Aa) for a school district, a school district building inspector from that school

989 district; or

990 (Bb) for a charter school, a school district building inspector from the school district in
991 which the charter school is located; and

992 (C) licensed to perform the inspection that the inspector is requested to perform.

993 (b) The approval under Subsection (7)(a)(iii)(B) may not be unreasonably withheld.

994 (c) If a school district or charter school uses a school district or independent building
995 inspector under Subsection (7)(a)(ii) or (iii), the school district or charter school shall submit to
996 the state superintendent of public instruction and county building official, on a monthly basis
997 during construction of the school building, a copy of each inspection certificate regarding the
998 school building.

999 (8) (a) A charter school shall be considered a permitted use in all zoning districts
1000 within a county.

1001 (b) Each land use application for any approval required for a charter school, including
1002 an application for a building permit, shall be processed on a first priority basis.

1003 (c) Parking requirements for a charter school may not exceed the minimum parking
1004 requirements for schools or other institutional public uses throughout the county.

1005 (d) If a county has designated zones for a sexually oriented business, or a business
1006 which sells alcohol, a charter school may be prohibited from a location which would otherwise
1007 defeat the purpose for the zone unless the charter school provides a waiver.

1008 (e) (i) A school district or a charter school may seek a certificate authorizing permanent
1009 occupancy of a school building from:

1010 (A) the state superintendent of public instruction, as provided in Subsection
1011 53A-20-104(3), if the school district or charter school used an independent building inspector
1012 for inspection of the school building; or

1013 (B) a county official with authority to issue the certificate, if the school district or
1014 charter school used a county building inspector for inspection of the school building.

1015 (ii) A school district may issue its own certificate authorizing permanent occupancy of
1016 a school building if it used its own building inspector for inspection of the school building,
1017 subject to the notification requirement of Subsection 53A-20-104(3)(a)(ii).

1018 (iii) A charter school may seek a certificate authorizing permanent occupancy of a
1019 school building from a school district official with authority to issue the certificate, if the

1020 charter school used a school district building inspector for inspection of the school building.

1021 (iv) A certificate authorizing permanent occupancy issued by the state superintendent
1022 of public instruction under Subsection 53A-20-104(3) or a school district official with authority
1023 to issue the certificate shall be considered to satisfy any county requirement for an inspection or
1024 a certificate of occupancy.

1025 (9) (a) A specified public agency intending to develop its land shall submit to the land
1026 use authority a development plan and schedule:

1027 (i) as early as practicable in the development process, but no later than the
1028 commencement of construction; and

1029 (ii) with sufficient detail to enable the land use authority to assess:

1030 (A) the specified public agency's compliance with applicable land use ordinances;

1031 (B) the demand for public facilities listed in Subsections 11-36-102(14)(a), (b), (c), (d),
1032 (e), and (g) caused by the development;

1033 (C) the amount of any applicable fee [~~listed in Subsection 17-27a-509(5)~~] described in
1034 Section 17-27a-509;

1035 (D) any credit against an impact fee; and

1036 (E) the potential for waiving an impact fee.

1037 (b) The land use authority shall respond to a specified public agency's submission
1038 under Subsection (9)(a) with reasonable promptness in order to allow the specified public
1039 agency to consider information the municipality provides under Subsection (9)(a)(ii) in the
1040 process of preparing the budget for the development.

1041 (10) Nothing in this section may be construed to modify or supersede Section
1042 17-27a-304.

1043 Section 7. Section **17-27a-509** is amended to read:

1044 **17-27a-509. Limit on fees -- Requirement to itemize fees -- Appeal of fee --**
1045 **Provider of culinary or secondary water.**

1046 (1) A county may not impose or collect a fee for reviewing or approving the plans for a
1047 commercial or residential building that exceeds the lesser of:

1048 (a) the actual cost of performing the plan review; and

1049 (b) 65% of the amount the county charges for a building permit fee for that building.

1050 (2) Subject to Subsection (1), a county may impose and collect only a nominal fee for

1051 reviewing and approving identical floor plans.

1052 (3) A county may not impose or collect a hookup fee that exceeds the reasonable cost
1053 of installing and inspecting the pipe, line, meter, or appurtenance to connect to the county
1054 water, sewer, storm water, power, or other utility system.

1055 (4) A county may not impose or collect:

1056 (a) a land use application fee that exceeds the reasonable cost of processing the
1057 application or issuing the permit; or

1058 (b) an inspection, regulation, or review fee that exceeds the reasonable cost of
1059 performing the inspection, regulation, or review.

1060 (5) ~~(a) [Upon the request of]~~ If requested by an applicant who is charged a fee or an
1061 owner of residential property upon which a fee is imposed, the county shall [itemize each fee
1062 that the county imposes on the applicant or on the residential property, respectively, showing
1063 the basis of each calculation for each fee imposed] provide an itemized fee statement that
1064 shows the calculation method for each fee.

1065 (b) If an applicant who is charged a fee or an owner of residential property upon which
1066 a fee is imposed submits a request for an itemized fee statement no later than 30 days after the
1067 day on which the applicant or owner pays the fee, the county shall no later than 10 days after
1068 the day on which the request is received provide or commit to provide within a specific time:

1069 (i) for each fee, any studies, reports, or methods relied upon by the county to create the
1070 calculation method described in Subsection (5)(a);

1071 (ii) an accounting of each fee paid;

1072 (iii) how each fee will be distributed; and

1073 (iv) information on filing a fee appeal through the process described in Subsection
1074 (5)(c).

1075 (c) A county shall establish a fee appeal process subject to an appeal authority
1076 described in Part 7, Appeal Authority and Variances, and district court review in accordance
1077 with Part 8, District Court Review, to determine whether a fee reflects only the reasonable
1078 estimated cost of:

1079 (i) regulation;

1080 (ii) processing an application;

1081 (iii) issuing a permit; or

1082 (iv) delivering the service for which the applicant or owner paid the fee.
1083 (6) A county may not impose on or collect from a public agency any fee associated
1084 with the public agency's development of its land other than:
1085 (a) subject to Subsection (4), a fee for a development service that the public agency
1086 does not itself provide;
1087 (b) subject to Subsection (3), a hookup fee; and
1088 (c) an impact fee for a public facility listed in Subsection 11-36-102(14)(a), (b), (c),
1089 (d), (e), or (g), subject to any applicable credit under Subsection 11-36-202(2)(b).
1090 (7) A provider of culinary or secondary water that commits to provide a water service
1091 required by a public land use application process is subject to the following as if it were a
1092 county:
1093 (a) Subsections (5) and (6);
1094 (b) Section 17-27a-507; and
1095 (c) Section 17-27a-509.5.
1096 Section 8. Section **17-27a-701** is amended to read:
1097 **17-27a-701. Appeal authority required -- Condition precedent to judicial review**
1098 **-- Appeal authority duties.**
1099 (1) Each county adopting a land use ordinance shall, by ordinance, establish one or
1100 more appeal authorities to hear and decide:
1101 (a) requests for variances from the terms of the land use ordinances; [~~and~~]
1102 (b) appeals from decisions applying the land use ordinances[-]; and
1103 (c) appeals from a fee charged in accordance with Section 17-27a-509.
1104 (2) As a condition precedent to judicial review, each adversely affected person shall
1105 timely and specifically challenge a land use authority's decision, in accordance with local
1106 ordinance.
1107 (3) An appeal authority:
1108 (a) shall:
1109 (i) act in a quasi-judicial manner; and
1110 (ii) serve as the final arbiter of issues involving the interpretation or application of land
1111 use ordinances; and
1112 (b) may not entertain an appeal of a matter in which the appeal authority, or any

1113 participating member, had first acted as the land use authority.
1114 (4) By ordinance, a county may:
1115 (a) designate a separate appeal authority to hear requests for variances than the appeal
1116 authority it designates to hear appeals;
1117 (b) designate one or more separate appeal authorities to hear distinct types of appeals
1118 of land use authority decisions;
1119 (c) require an adversely affected party to present to an appeal authority every theory of
1120 relief that it can raise in district court;
1121 (d) not require an adversely affected party to pursue duplicate or successive appeals
1122 before the same or separate appeal authorities as a condition of the adversely affected party's
1123 duty to exhaust administrative remedies; and
1124 (e) provide that specified types of land use decisions may be appealed directly to the
1125 district court.
1126 (5) If the county establishes or, prior to the effective date of this chapter, has
1127 established a multiperson board, body, or panel to act as an appeal authority, at a minimum the
1128 board, body, or panel shall:
1129 (a) notify each of its members of any meeting or hearing of the board, body, or panel;
1130 (b) provide each of its members with the same information and access to municipal
1131 resources as any other member;
1132 (c) convene only if a quorum of its members is present; and
1133 (d) act only upon the vote of a majority of its convened members.

Legislative Review Note
as of 1-25-11 3:09 PM

Office of Legislative Research and General Counsel

FISCAL NOTE

H.B. 78

SHORT TITLE: **Developer Fees**

SPONSOR: **Morley, M.**

2011 GENERAL SESSION, STATE OF UTAH

STATE GOVERNMENT (UCA 36-12-13(2)(b))

Enactment of this bill likely will not materially impact the state budget.

LOCAL GOVERNMENTS (UCA 36-12-13(2)(c))

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for local governments.

DIRECT EXPENDITURES BY UTAH RESIDENTS AND BUSINESSES (UCA 36-12-13(2)(d))

Enactment of this bill likely will not result in direct, measurable expenditures by Utah residents or businesses.