

Representative Melvin R. Brown proposes the following substitute bill:

LAND DEVELOPMENT REVISIONS

2013 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Melvin R. Brown

Senate Sponsor: Margaret Dayton

LONG TITLE

General Description:

This bill amends provisions related to a county's regulation of land use and development.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ prohibits a county from adopting a land use ordinance that, in certain circumstances, requires a property owner to revegetate or landscape;
- ▶ enacts provisions governing the application of a site plan; and
- ▶ makes technical corrections.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

17-27a-103, as last amended by Laws of Utah 2012, Chapter 231

17-27a-505, as last amended by Laws of Utah 2008, Chapter 326



26 ENACTS:

27 **17-27a-522**, Utah Code Annotated 1953



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

30 Section 1. Section **17-27a-103** is amended to read:

31 **17-27a-103. Definitions.**

32 As used in this chapter:

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

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

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

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

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

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

51 (4) (a) "Charter school" means:

52 (i) an operating charter school;

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

55 (iii) an entity who is working on behalf of a charter school or approved charter
56 applicant to develop or construct a charter school building.

57 (b) "Charter school" does not include a therapeutic school.

58 (5) "Chief executive officer" means the person or body that exercises the executive
59 powers of the county.

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

64 (7) "Constitutional taking" means a governmental action that results in a taking of
65 private property so that compensation to the owner of the property is required by the:

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

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

68 (8) "Culinary water authority" means the department, agency, or public entity with
69 responsibility to review and approve the feasibility of the culinary water system and sources for
70 the subject property.

71 (9) "Development activity" means:

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

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

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

78 (10) (a) "Disability" means a physical or mental impairment that substantially limits
79 one or more of a person's major life activities, including a person having a record of such an
80 impairment or being regarded as having such an impairment.

81 (b) "Disability" does not include current illegal use of, or addiction to, any federally
82 controlled substance, as defined in Section 102 of the Controlled Substances Act, 21 U.S.C.
83 802.

84 (11) "Educational facility":

85 (a) means:

86 (i) a school district's building at which pupils assemble to receive instruction in a
87 program for any combination of grades from preschool through grade 12, including

88 kindergarten and a program for children with disabilities;

89 (ii) a structure or facility:

90 (A) located on the same property as a building described in Subsection (11)(a)(i); and

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

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

94 (b) does not include:

95 (i) land or a structure, including land or a structure for inventory storage, equipment
96 storage, food processing or preparing, vehicle storage or maintenance, or similar use that is:

97 (A) not located on the same property as a building described in Subsection (11)(a)(i);

98 and

99 (B) used in support of the purposes of a building described in Subsection (11)(a)(i); or

100 (ii) a therapeutic school.

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

104 (13) "Fire authority" means the department, agency, or public entity with responsibility
105 to review and approve the feasibility of fire protection and suppression services for the subject
106 property.

107 (14) "Flood plain" means land that:

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

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

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

115 (16) "General plan" means a document that a county adopts that sets forth general
116 guidelines for proposed future development of the unincorporated land within the county.

117 (17) "Geologic hazard" means:

118 (a) a surface fault rupture;

- 119 (b) shallow groundwater;
- 120 (c) liquefaction;
- 121 (d) a landslide;
- 122 (e) a debris flow;
- 123 (f) unstable soil;
- 124 (g) a rock fall; or
- 125 (h) any other geologic condition that presents a risk:
- 126 (i) to life;
- 127 (ii) of substantial loss of real property; or
- 128 (iii) of substantial damage to real property.
- 129 (18) "Internal lot restriction" means a platted note, platted demarcation, or platted
- 130 designation that:
 - 131 (a) runs with the land; and
 - 132 (b) (i) creates a restriction that is enclosed within the perimeter of a lot described on
 - 133 the plat; or
 - 134 (ii) designates a development condition that is enclosed within the perimeter of a lot
 - 135 described on the plat.
- 136 (19) "Hookup fee" means a fee for the installation and inspection of any pipe, line,
- 137 meter, or appurtenance to connect to a county water, sewer, storm water, power, or other utility
- 138 system.
- 139 (20) "Identical plans" means building plans submitted to a county that:
 - 140 (a) are clearly marked as "identical plans";
 - 141 (b) are substantially identical building plans that were previously submitted to and
 - 142 reviewed and approved by the county; and
 - 143 (c) describe a building that:
 - 144 (i) is located on land zoned the same as the land on which the building described in the
 - 145 previously approved plans is located;
 - 146 (ii) is subject to the same geological and meteorological conditions and the same law
 - 147 as the building described in the previously approved plans;
 - 148 (iii) has a floor plan identical to the building plan previously submitted to and reviewed
 - 149 and approved by the county; and

- 150 (iv) does not require any additional engineering or analysis.
- 151 (21) "Impact fee" means a payment of money imposed under Title 11, Chapter 36a,
152 Impact Fees Act.
- 153 (22) "Improvement assurance" means a surety bond, letter of credit, cash, or other
154 security:
- 155 (a) to guaranty the proper completion of an improvement;
- 156 (b) that is required as a condition precedent to:
- 157 (i) recording a subdivision plat; or
- 158 (ii) beginning development activity; and
- 159 (c) that is offered to a land use authority to induce the land use authority, before actual
160 construction of required improvements, to:
- 161 (i) consent to the recording of a subdivision plat; or
- 162 (ii) issue a permit for development activity.
- 163 (23) "Improvement assurance warranty" means a promise that the materials and
164 workmanship of improvements:
- 165 (a) comport with standards that the county has officially adopted; and
- 166 (b) will not fail in any material respect within a warranty period.
- 167 (24) "Interstate pipeline company" means a person or entity engaged in natural gas
168 transportation subject to the jurisdiction of the Federal Energy Regulatory Commission under
169 the Natural Gas Act, 15 U.S.C. Sec. 717 et seq.
- 170 (25) "Intrastate pipeline company" means a person or entity engaged in natural gas
171 transportation that is not subject to the jurisdiction of the Federal Energy Regulatory
172 Commission under the Natural Gas Act, 15 U.S.C. Sec. 717 et seq.
- 173 (26) "Land use application" means an application required by a county's land use
174 ordinance.
- 175 (27) "Land use authority" means a person, board, commission, agency, or other body
176 designated by the local legislative body to act upon a land use application.
- 177 (28) "Land use ordinance" means a planning, zoning, development, or subdivision
178 ordinance of the county, but does not include the general plan.
- 179 (29) "Land use permit" means a permit issued by a land use authority.
- 180 (30) "Legislative body" means the county legislative body, or for a county that has

181 adopted an alternative form of government, the body exercising legislative powers.

182 (31) "Local district" means any entity under Title 17B, Limited Purpose Local
183 Government Entities - Local Districts, and any other governmental or quasi-governmental
184 entity that is not a county, municipality, school district, or the state.

185 (32) "Lot line adjustment" means the relocation of the property boundary line in a
186 subdivision between two adjoining lots with the consent of the owners of record.

187 (33) "Moderate income housing" means housing occupied or reserved for occupancy
188 by households with a gross household income equal to or less than 80% of the median gross
189 income for households of the same size in the county in which the housing is located.

190 (34) "Nominal fee" means a fee that reasonably reimburses a county only for time spent
191 and expenses incurred in:

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

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

195 (35) "Noncomplying structure" means a structure that:

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

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

200 (36) "Nonconforming use" means a use of land that:

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

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

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

206 (37) "Official map" means a map drawn by county authorities and recorded in the
207 county recorder's office that:

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

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

212 the land; and

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

214 (38) "Person" means an individual, corporation, partnership, organization, association,
215 trust, governmental agency, or any other legal entity.

216 (39) "Plan for moderate income housing" means a written document adopted by a
217 county legislative body that includes:

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

220 (b) an estimate of the need for moderate income housing in the county for the next five
221 years as revised biennially;

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

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

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

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

229 (41) "Potential geologic hazard area" means an area that:

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

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

236 (42) "Public agency" means:

237 (a) the federal government;

238 (b) the state;

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

241 (d) a charter school.

242 (43) "Public hearing" means a hearing at which members of the public are provided a

243 reasonable opportunity to comment on the subject of the hearing.

244 (44) "Public meeting" means a meeting that is required to be open to the public under
245 Title 52, Chapter 4, Open and Public Meetings Act.

246 (45) "Receiving zone" means an unincorporated area of a county that the county
247 designates, by ordinance, as an area in which an owner of land may receive a transferable
248 development right.

249 (46) "Record of survey map" means a map of a survey of land prepared in accordance
250 with Section 17-23-17.

251 (47) "Residential facility for elderly persons" means a single-family or multiple-family
252 dwelling unit that meets the requirements of Section 17-27a-515, but does not include a health
253 care facility as defined by Section 26-21-2.

254 (48) "Residential facility for persons with a disability" means a residence:

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

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

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

260 (49) "Rules of order and procedure" means a set of rules that govern and prescribe in a
261 public meeting:

262 (a) parliamentary order and procedure;

263 (b) ethical behavior; and

264 (c) civil discourse.

265 (50) "Sanitary sewer authority" means the department, agency, or public entity with
266 responsibility to review and approve the feasibility of sanitary sewer services or onsite
267 wastewater systems.

268 (51) "Sending zone" means an unincorporated area of a county that the county
269 designates, by ordinance, as an area from which an owner of land may transfer a transferable
270 development right.

271 (52) "Site plan" means a document or map that may be required by a county during a
272 preliminary review preceding the issuance of a building permit to demonstrate that an owner's
273 or developer's proposed development activity meets a land use requirement.

274 [~~(52)~~] (53) "Specified public agency" means:

275 (a) the state;

276 (b) a school district; or

277 (c) a charter school.

278 [~~(53)~~] (54) "Specified public utility" means an electrical corporation, gas corporation,
279 or telephone corporation, as those terms are defined in Section 54-2-1.

280 [~~(54)~~] (55) "State" includes any department, division, or agency of the state.

281 [~~(55)~~] (56) "Street" means a public right-of-way, including a highway, avenue,
282 boulevard, parkway, road, lane, walk, alley, viaduct, subway, tunnel, bridge, public easement,
283 or other way.

284 [~~(56)~~] (57) (a) "Subdivision" means any land that is divided, resubdivided or proposed
285 to be divided into two or more lots, parcels, sites, units, plots, or other division of land for the
286 purpose, whether immediate or future, for offer, sale, lease, or development either on the
287 installment plan or upon any and all other plans, terms, and conditions.

288 (b) "Subdivision" includes:

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

291 (ii) except as provided in Subsection [~~(56)~~] (57)(c), divisions of land for residential and
292 nonresidential uses, including land used or to be used for commercial, agricultural, and
293 industrial purposes.

294 (c) "Subdivision" does not include:

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

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

298 (A) no new lot is created; and

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

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

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

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

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

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

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

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

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

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

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

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

318 (d) The joining of a subdivided parcel of property to another parcel of property that has
319 not been subdivided does not constitute a subdivision under this Subsection [~~(56)~~ (57) as to
320 the unsubdivided parcel of property or subject the unsubdivided parcel to the county's
321 subdivision ordinance.

322 [~~(57)~~ (58) "Therapeutic school" means a residential group living facility:

323 (a) for four or more individuals who are not related to:

324 (i) the owner of the facility; or

325 (ii) the primary service provider of the facility;

326 (b) that serves students who have a history of failing to function:

327 (i) at home;

328 (ii) in a public school; or

329 (iii) in a nonresidential private school; and

330 (c) that offers:

331 (i) room and board; and

332 (ii) an academic education integrated with:

333 (A) specialized structure and supervision; or

334 (B) services or treatment related to a disability, an emotional development, a
335 behavioral development, a familial development, or a social development.

336 [~~(58)~~] (59) "Township" means a contiguous, geographically defined portion of the
337 unincorporated area of a county, established under this part or reconstituted or reinstated under
338 Section 17-27a-306, with planning and zoning functions as exercised through the township
339 planning commission, as provided in this chapter, but with no legal or political identity
340 separate from the county and no taxing authority, except that "township" means a former
341 township under Laws of Utah 1996, Chapter 308, where the context so indicates.

342 [~~(59)~~] (60) "Transferable development right" means a right to develop and use land that
343 originates by an ordinance that authorizes a land owner in a designated sending zone to transfer
344 land use rights from a designated sending zone to a designated receiving zone.

345 [~~(60)~~] (61) "Unincorporated" means the area outside of the incorporated area of a
346 municipality.

347 [~~(61)~~] (62) "Water interest" means any right to the beneficial use of water, including:

348 (a) each of the rights listed in Section 73-1-11; and

349 (b) an ownership interest in the right to the beneficial use of water represented by:

350 (i) a contract; or

351 (ii) a share in a water company, as defined in Section 73-3-3.5.

352 [~~(62)~~] (63) "Zoning map" means a map, adopted as part of a land use ordinance, that
353 depicts land use zones, overlays, or districts.

354 Section 2. Section **17-27a-505** is amended to read:

355 **17-27a-505. Zoning districts.**

356 (1) (a) The legislative body may divide the territory over which it has jurisdiction into
357 zoning districts of a number, shape, and area that it considers appropriate to carry out the
358 purposes of this chapter.

359 (b) Within those zoning districts, the legislative body may regulate and restrict the
360 erection, construction, reconstruction, alteration, repair, or use of buildings and structures, and
361 the use of land.

362 (c) A county may enact an ordinance regulating land use and development in a flood
363 plain or potential geologic hazard area to:

364 (i) protect life; and

365 (ii) prevent:

366 (A) the substantial loss of real property; or

367 (B) substantial damage to real property.

368 (d) A county may not adopt a land use ordinance requiring a property owner to
369 revegetate or landscape unless the property is located in a flood zone or geologic hazard except
370 as required in Title 19, Chapter 5, Water Quality Act, to comply with federal law related to
371 water pollution.

372 (2) The legislative body shall ensure that the regulations are uniform for each class or
373 kind of buildings throughout each zone, but the regulations in one zone may differ from those
374 in other zones.

375 (3) (a) There is no minimum area or diversity of ownership requirement for a zone
376 designation.

377 (b) Neither the size of a zoning district nor the number of landowners within the
378 district may be used as evidence of the illegality of a zoning district or of the invalidity of a
379 county decision.

380 Section 3. Section **17-27a-522** is enacted to read:

381 **17-27a-522. Site plan.**

382 A site plan submitted to a county for approval of a building permit:

383 (1) if modified, may not be used to impose a penalty on a property owner;

384 (2) does not represent an agreement for a specific final layout;

385 (3) does not bind an owner from future development activity or modifications to a
386 development activity on the property; and

387 (4) is supercede by the terms of a building permit requirement.