

HISTORIC PRESERVATION AMENDMENTS

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: R. Curt Webb

Senate Sponsor: Daniel W. Thatcher

LONG TITLE

General Description:

This bill addresses administrative decisions and appeals related to land use applications in historic preservation districts or areas.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ authorizes a legislative body to designate a historic preservation authority to make administrative decisions on land use applications related to historically significant real property;
- ▶ requires the establishment of an appeal authority to review decisions of a historic preservation authority; and
- ▶ makes technical and conforming changes.

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 2015, Chapter 327

10-9a-503, as last amended by Laws of Utah 2016, Chapter 404

10-9a-701, as last amended by Laws of Utah 2011, Chapter 92

29 **10-9a-703**, as last amended by Laws of Utah 2008, Chapter 326

30 **10-9a-704**, as last amended by Laws of Utah 2006, Chapter 240

31 ENACTS:

32 **10-9a-527**, Utah Code Annotated 1953



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 district
39 under Title 17D, Chapter 1, Special Service District Act, school district, interlocal cooperation
40 entity established under Title 11, Chapter 13, Interlocal Cooperation Act, specified public
41 utility, property owner, property owners association, or the Utah Department of Transportation,
42 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) (a) "Charter school" means:
- 57 (i) an operating charter school;
- 58 (ii) a charter school applicant that has its application approved by a charter school
- 59 authorizer in accordance with Title 53A, Chapter 1a, Part 5, The Utah Charter Schools Act; or
- 60 (iii) an entity that is working on behalf of a charter school or approved charter applicant
- 61 to develop or construct a charter school building.
- 62 (b) "Charter school" does not include a therapeutic school.
- 63 (5) "Conditional use" means a land use that, because of its unique characteristics or
- 64 potential impact on the municipality, surrounding neighbors, or adjacent land uses, may not be
- 65 compatible in some areas or may be compatible only if certain conditions are required that
- 66 mitigate or eliminate the detrimental impacts.
- 67 (6) "Constitutional taking" means a governmental action that results in a taking of
- 68 private property so that compensation to the owner of the property is required by the:
- 69 (a) Fifth or Fourteenth Amendment of the Constitution of the United States; or
- 70 (b) Utah Constitution, Article I, Section 22.
- 71 (7) "Culinary water authority" means the department, agency, or public entity with
- 72 responsibility to review and approve the feasibility of the culinary water system and sources for
- 73 the subject property.
- 74 (8) "Development activity" means:
- 75 (a) any construction or expansion of a building, structure, or use that creates additional
- 76 demand and need for public facilities;
- 77 (b) any change in use of a building or structure that creates additional demand and need
- 78 for public facilities; or
- 79 (c) any change in the use of land that creates additional demand and need for public
- 80 facilities.
- 81 (9) (a) "Disability" means a physical or mental impairment that substantially limits one
- 82 or more of a person's major life activities, including a person having a record of such an

83 impairment or being regarded as having such an impairment.

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

87 (10) "Educational facility":

88 (a) means:

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

92 (ii) a structure or facility:

93 (A) located on the same property as a building described in Subsection (10)(a)(i); and

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

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

97 (b) does not include:

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

100 (A) not located on the same property as a building described in Subsection (10)(a)(i);

101 and

102 (B) used in support of the purposes of a building described in Subsection (10)(a)(i); or

103 (ii) a therapeutic school.

104 (11) "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 (12) "Flood plain" means land that:

108 (a) is within the 100-year flood plain designated by the Federal Emergency Management
109 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 (13) "General plan" means a document that a municipality adopts that sets forth general
115 guidelines for proposed future development of the land within the municipality.

116 (14) "Geologic hazard" means:

- 117 (a) a surface fault rupture;
- 118 (b) shallow groundwater;
- 119 (c) liquefaction;
- 120 (d) a landslide;
- 121 (e) a debris flow;
- 122 (f) unstable soil;
- 123 (g) a rock fall; or
- 124 (h) any other geologic condition that presents a risk:
 - 125 (i) to life;
 - 126 (ii) of substantial loss of real property; or
 - 127 (iii) of substantial damage to real property.

128 (15) "Historic preservation authority" means a person, board, commission, or other
129 body designated by a legislative body to:

- 130 (a) recommend land use regulations to preserve local historic districts or areas; and
- 131 (b) administer local historic preservation land use regulations within a local historic
132 district or area.

133 [~~15~~] (16) "Hookup fee" means a fee for the installation and inspection of any pipe,
134 line, meter, or appurtenance that connects to a municipal water, sewer, storm water, power, or
135 other utility system.

136 [~~16~~] (17) "Identical plans" means building plans submitted to a municipality that:

- 137 (a) are clearly marked as "identical plans";
- 138 (b) are substantially identical to building plans that were previously submitted to and
139 reviewed and approved by the municipality; and
- 140 (c) describe a building that:
- 141 (i) is located on land zoned the same as the land on which the building described in the
142 previously approved plans is located;
- 143 (ii) is subject to the same geological and meteorological conditions and the same law as
144 the building described in the previously approved plans;
- 145 (iii) has a floor plan identical to the building plan previously submitted to and reviewed
146 and approved by the municipality; and
- 147 (iv) does not require any additional engineering or analysis.
- 148 [~~(17)~~] (18) "Impact fee" means a payment of money imposed under Title 11, Chapter
149 36a, Impact Fees Act.
- 150 [~~(18)~~] (19) "Improvement completion assurance" means a surety bond, letter of credit,
151 financial institution bond, cash, assignment of rights, lien, or other equivalent security required
152 by a municipality to guaranty the proper completion of landscaping or an infrastructure
153 improvement required as a condition precedent to:
- 154 (a) recording a subdivision plat; or
- 155 (b) development of a commercial, industrial, mixed use, or multifamily project.
- 156 [~~(19)~~] (20) "Improvement warranty" means an applicant's unconditional warranty that
157 the applicant's installed and accepted landscaping or infrastructure improvement:
- 158 (a) complies with the municipality's written standards for design, materials, and
159 workmanship; and
- 160 (b) will not fail in any material respect, as a result of poor workmanship or materials,
161 within the improvement warranty period.
- 162 [~~(20)~~] (21) "Improvement warranty period" means a period:
- 163 (a) no later than one year after a municipality's acceptance of required landscaping; or

164 (b) no later than one year after a municipality's acceptance of required infrastructure,
165 unless the municipality:

166 (i) determines for good cause that a one-year period would be inadequate to protect the
167 public health, safety, and welfare; and

168 (ii) has substantial evidence, on record:

169 (A) of prior poor performance by the applicant; or

170 (B) that the area upon which the infrastructure will be constructed contains suspect soil
171 and the municipality has not otherwise required the applicant to mitigate the suspect soil.

172 ~~[(21)]~~ (22) "Infrastructure improvement" means permanent infrastructure that an
173 applicant must install:

174 (a) pursuant to published installation and inspection specifications for public
175 improvements; and

176 (b) as a condition of:

177 (i) recording a subdivision plat; or

178 (ii) development of a commercial, industrial, mixed use, condominium, or multifamily
179 project.

180 ~~[(22)]~~ (23) "Internal lot restriction" means a platted note, platted demarcation, or
181 platted designation that:

182 (a) runs with the land; and

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

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

187 ~~[(23)]~~ (24) "Land use application" means an application required by a municipality's
188 land use ordinance.

189 ~~[(24)]~~ (25) "Land use authority" means:

190 (a) a person, board, commission, agency, or body, including the local legislative body,

191 designated by the local legislative body to act upon a land use application; or

192 (b) if the local legislative body has not designated a person, board, commission, agency,
193 or body, the local legislative body.

194 [~~25~~] (26) "Land use ordinance" means a planning, zoning, development, or
195 subdivision ordinance of the municipality, but does not include the general plan.

196 [~~26~~] (27) "Land use permit" means a permit issued by a land use authority.

197 [~~27~~] (28) "Legislative body" means the municipal council.

198 [~~28~~] (29) "Local district" means an entity under Title 17B, Limited Purpose Local
199 Government Entities - Local Districts, and any other governmental or quasi-governmental entity
200 that is not a county, municipality, school district, or the state.

201 (30) "Local historic district or area" means a geographically definable area that:

202 (a) contains any combination of buildings, structures, sites, objects, landscape features,
203 archeological sites, or works of art that contribute to the historic preservation goals of a
204 legislative body; and

205 (b) is subject to land use regulations to preserve the historic significance of the local
206 historic district or area.

207 [~~29~~] (31) "Lot line adjustment" means the relocation of the property boundary line in
208 a subdivision between two adjoining lots with the consent of the owners of record.

209 [~~30~~] (32) "Moderate income housing" means housing occupied or reserved for
210 occupancy by households with a gross household income equal to or less than 80% of the
211 median gross income for households of the same size in the county in which the city is located.

212 [~~31~~] (33) "Nominal fee" means a fee that reasonably reimburses a municipality only
213 for time spent and expenses incurred in:

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

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

217 [~~32~~] (34) "Noncomplying structure" means a structure that:

218 (a) legally existed before its current land use designation; and
219 (b) because of one or more subsequent land use ordinance changes, does not conform
220 to the setback, height restrictions, or other regulations, excluding those regulations, which
221 govern the use of land.

222 [~~(33)~~] (35) "Nonconforming use" means a use of land that:

223 (a) legally existed before its current land use designation;
224 (b) has been maintained continuously since the time the land use ordinance governing
225 the land changed; and
226 (c) because of one or more subsequent land use ordinance changes, does not conform
227 to the regulations that now govern the use of the land.

228 [~~(34)~~] (36) "Official map" means a map drawn by municipal authorities and recorded in
229 a county recorder's office that:

230 (a) shows actual and proposed rights-of-way, centerline alignments, and setbacks for
231 highways and other transportation facilities;
232 (b) provides a basis for restricting development in designated rights-of-way or between
233 designated setbacks to allow the government authorities time to purchase or otherwise reserve
234 the land; and
235 (c) has been adopted as an element of the municipality's general plan.

236 [~~(35)~~] (37) "Parcel boundary adjustment" means a recorded agreement between owners
237 of adjoining properties adjusting their mutual boundary if:

238 (a) no additional parcel is created; and
239 (b) each property identified in the agreement is unsubdivided land, including a
240 remainder of subdivided land.

241 [~~(36)~~] (38) "Person" means an individual, corporation, partnership, organization,
242 association, trust, governmental agency, or any other legal entity.

243 [~~(37)~~] (39) "Plan for moderate income housing" means a written document adopted by
244 a city legislative body that includes:

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

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

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

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

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

254 [~~38~~] (40) "Plat" means a map or other graphical representation of lands being laid out
255 and prepared in accordance with Section 10-9a-603, 17-23-17, or 57-8-13.

256 [~~39~~] (41) "Potential geologic hazard area" means an area that:

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

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

263 [~~40~~] (42) "Public agency" means:

264 (a) the federal government;

265 (b) the state;

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

268 (d) a charter school.

269 [~~41~~] (43) "Public hearing" means a hearing at which members of the public are
270 provided a reasonable opportunity to comment on the subject of the hearing.

271 [~~42~~] (44) "Public meeting" means a meeting that is required to be open to the public

272 under Title 52, Chapter 4, Open and Public Meetings Act.

273 ~~[(43)]~~ (45) "Receiving zone" means an area of a municipality that the municipality
274 designates, by ordinance, as an area in which an owner of land may receive a transferable
275 development right.

276 ~~[(44)]~~ (46) "Record of survey map" means a map of a survey of land prepared in
277 accordance with Section [17-23-17](#).

278 ~~[(45)]~~ (47) "Residential facility for persons with a disability" means a residence:

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

280 (b) (i) which is licensed or certified by the Department of Human Services under Title
281 62A, Chapter 2, Licensure of Programs and Facilities; or

282 (ii) which is licensed or certified by the Department of Health under Title 26, Chapter
283 21, Health Care Facility Licensing and Inspection Act.

284 ~~[(46)]~~ (48) "Rules of order and procedure" means a set of rules that govern and
285 prescribe in a public meeting:

286 (a) parliamentary order and procedure;

287 (b) ethical behavior; and

288 (c) civil discourse.

289 ~~[(47)]~~ (49) "Sanitary sewer authority" means the department, agency, or public entity
290 with responsibility to review and approve the feasibility of sanitary sewer services or onsite
291 wastewater systems.

292 ~~[(48)]~~ (50) "Sending zone" means an area of a municipality that the municipality
293 designates, by ordinance, as an area from which an owner of land may transfer a transferable
294 development right.

295 ~~[(49)]~~ (51) "Specified public agency" means:

296 (a) the state;

297 (b) a school district; or

298 (c) a charter school.

299 ~~[(50)]~~ (52) "Specified public utility" means an electrical corporation, gas corporation,
300 or telephone corporation, as those terms are defined in Section [54-2-1](#).

301 ~~[(51)]~~ (53) "State" includes any department, division, or agency of the state.

302 ~~[(52)]~~ (54) "Street" means a public right-of-way, including a highway, avenue,
303 boulevard, parkway, road, lane, walk, alley, viaduct, subway, tunnel, bridge, public easement, or
304 other way.

305 ~~[(53)]~~ (55) (a) "Subdivision" means any land that is divided, resubdivided or proposed
306 to be divided into two or more lots, parcels, sites, units, plots, or other division of land for the
307 purpose, whether immediate or future, for offer, sale, lease, or development either on the
308 installment plan or upon any and all other plans, terms, and conditions.

309 (b) "Subdivision" includes:

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

312 (ii) except as provided in Subsection ~~[(53)]~~ (55)(c), divisions of land for residential and
313 nonresidential uses, including land used or to be used for commercial, agricultural, and
314 industrial purposes.

315 (c) "Subdivision" does not include:

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

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

322 (A) no new lot is created; and

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

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

325 (A) revising the legal description of more than one contiguous unsubdivided parcel of

326 property into one legal description encompassing all such parcels of property; or

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

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

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

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

333 (v) a bona fide division or partition of land by deed or other instrument where the land
334 use authority expressly approves in writing the division in anticipation of further land use
335 approvals on the parcel or parcels; or

336 (vi) a parcel boundary adjustment.

337 (d) The joining of a subdivided parcel of property to another parcel of property that has
338 not been subdivided does not constitute a subdivision under this Subsection [~~(53)~~] (55) as to the
339 unsubdivided parcel of property or subject the unsubdivided parcel to the municipality's
340 subdivision ordinance.

341 [~~(54)~~] (56) "Suspect soil" means soil that has:

342 (a) a high susceptibility for volumetric change, typically clay rich, having more than a
343 3% swell potential;

344 (b) bedrock units with high shrink or swell susceptibility; or

345 (c) gypsiferous silt and clay, gypsum, or bedrock units containing abundant gypsum
346 commonly associated with dissolution and collapse features.

347 [~~(55)~~] (57) "Therapeutic school" means a residential group living facility:

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

349 (i) the owner of the facility; or

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

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

352 (i) at home;

- 353 (ii) in a public school; or
- 354 (iii) in a nonresidential private school; and
- 355 (c) that offers:
 - 356 (i) room and board; and
 - 357 (ii) an academic education integrated with:
 - 358 (A) specialized structure and supervision; or
 - 359 (B) services or treatment related to a disability, an emotional development, a behavioral
 - 360 development, a familial development, or a social development.

361 [~~(56)~~] (58) "Transferable development right" means a right to develop and use land that
362 originates by an ordinance that authorizes a land owner in a designated sending zone to transfer
363 land use rights from a designated sending zone to a designated receiving zone.

364 [~~(57)~~] (59) "Unincorporated" means the area outside of the incorporated area of a city
365 or town.

366 [~~(58)~~] (60) "Water interest" means any right to the beneficial use of water, including:
367 (a) each of the rights listed in Section 73-1-11; and
368 (b) an ownership interest in the right to the beneficial use of water represented by:
369 (i) a contract; or
370 (ii) a share in a water company, as defined in Section 73-3-3.5.

371 [~~(59)~~] (61) "Zoning map" means a map, adopted as part of a land use ordinance, that
372 depicts land use zones, overlays, or districts.

373 Section 2. Section **10-9a-503** is amended to read:

374 **10-9a-503. Land use ordinance or zoning map amendments -- Historic district or**
375 **area.**

- 376 (1) The legislative body may amend:
 - 377 (a) the number, shape, boundaries, or area of any zoning district;
 - 378 (b) any regulation of or within the zoning district; or
 - 379 (c) any other provision of a land use ordinance.

380 (2) The legislative body may not make any amendment authorized by this section unless
381 the amendment was proposed by the planning commission or was first submitted to the planning
382 commission for its recommendation.

383 (3) The legislative body shall comply with the procedure specified in Section 10-9a-502
384 in preparing and adopting an amendment to a land use ordinance or a zoning map.

385 (4) (a) As used in this Subsection (4):

386 (i) "Condominium project" means the same as that term is defined in Section 57-8-3.

387 ~~[(ii) "Local historic district or area" means a geographically or thematically definable
388 area that contains any combination of buildings, structures, sites, objects, landscape features,
389 archeological sites, or works of art that contribute to the historic preservation goals of a
390 legislative body.]~~

391 ~~[(iii)]~~ (ii) "Unit" means the same as that term is defined in Section 57-8-3.

392 (b) If a municipality provides a process by which one or more residents of the
393 municipality may initiate the creation of a local historic district or area, the process shall require
394 that:

395 (i) more than 33% of the property owners within the boundaries of the proposed local
396 historic district or area agree in writing to the creation of the proposed local historic district or
397 area;

398 (ii) before any property owner agrees to the creation of a proposed local historic district
399 or area under Subsection (4)(b)(i), the municipality prepare and distribute, to each property
400 owner within the boundaries of the proposed local historic district or area, a neutral information
401 pamphlet that:

402 (A) describes the process to create a local historic district or area; and

403 (B) lists the pros and cons of a local historic district or area;

404 (iii) after the property owners satisfy the requirement described in Subsection (4)(b)(i),
405 for each parcel or, if the parcel contains a condominium project, each unit, within the
406 boundaries of the proposed local historic district or area, the municipality provide:

407 (A) a second copy of the neutral information pamphlet described in Subsection
408 (4)(b)(ii); and

409 (B) one public support ballot that, subject to Subsection (4)(c), allows the owner or
410 owners of record to vote in favor of or against the creation of the proposed local historic
411 district or area;

412 (iv) in a vote described in Subsection (4)(b)(iii)(B), the returned public support ballots
413 that reflect a vote in favor of the creation of the proposed local historic district or area:

414 (A) equal at least two-thirds of the returned public support ballots; and
415 (B) represent more than 50% of the parcels and units within the proposed local historic
416 district or area;

417 (v) if a local historic district or area proposal fails in a vote described in Subsection
418 (4)(b)(iii)(B), the legislative body may override the vote and create the proposed local historic
419 district or area with an affirmative vote of two-thirds of the members of the legislative body;
420 and

421 (vi) if a local historic district or area proposal fails in a vote described in Subsection
422 (4)(b)(iii)(B) and the legislative body does not override the vote under Subsection (4)(b)(v), a
423 resident may not initiate the creation of a local historic district or area that includes more than
424 50% of the same property as the failed local historic district or area proposal for four years after
425 the day on which the public support ballots for the vote are due.

426 (c) In a vote described in Subsection (4)(b)(iii)(B):

427 (i) a property owner is eligible to vote regardless of whether the property owner is an
428 individual, a private entity, or a public entity;

429 (ii) the municipality shall count no more than one public support ballot for:

430 (A) each parcel within the boundaries of the proposed local historic district or area; or
431 (B) if the parcel contains a condominium project, each unit within the boundaries of the
432 proposed local historic district or area; and

433 (iii) if a parcel or unit has more than one owner of record, the municipality shall count a

434 public support ballot for the parcel or unit only if the public support ballot reflects the vote of
435 the property owners who own at least a 50% interest in the parcel or unit.

436 (d) The requirements described in Subsection (4)(b)(iv) apply to the creation of a local
437 historic district or area that is:

- 438 (i) initiated in accordance with a municipal process described in Subsection (4)(b); and
- 439 (ii) not complete on or before January 1, 2016.

440 (e) A vote described in Subsection (4)(b)(iii)(B) is not subject to Title 20A, Election
441 Code.

442 Section 3. Section **10-9a-527** is enacted to read:

443 **10-9a-527. Historic preservation authority.**

444 (1) (a) A legislative body may designate a historic preservation authority.

445 (b) A legislative body may not designate the legislative body or the municipality's
446 governing body as a historic preservation authority.

447 (2) In making administrative decisions on land use applications, a historic preservation
448 authority shall apply the plain language of the land use regulations to a land use application.

449 (3) If a land use regulation does not plainly restrict a land use application, the historic
450 preservation authority shall interpret and apply the land use regulation to favor the land use
451 application.

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

453 **10-9a-701. Appeal authority required -- Condition precedent to judicial review --**
454 **Appeal authority duties.**

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

- 457 (a) requests for variances from the terms of the land use ordinances;
- 458 (b) appeals from decisions applying the land use ordinances; and
- 459 (c) appeals from a fee charged in accordance with Section **10-9a-510**.

460 (2) As a condition precedent to judicial review, each adversely affected person shall

461 timely and specifically challenge a land use authority's decision, in accordance with local
462 ordinance.

463 (3) An appeal authority:

464 (a) shall:

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

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

468 (b) may not entertain an appeal of a matter in which the appeal authority, or any
469 participating member, had first acted as the land use authority.

470 (4) By ordinance, a municipality may:

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

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

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

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

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

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

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

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

- 488 (c) convene only if a quorum of its members is present; and
- 489 (d) act only upon the vote of a majority of its convened members.

490 (6) (a) Each municipality that designates a historic preservation district or area shall, by
491 ordinance, establish or designate a historic preservation appeal authority.

492 (b) A historic preservation appeal authority shall:

- 493 (i) be comprised of the members of the governing body;
- 494 (ii) exercise only administrative authority and act in a quasi-judicial manner; and
- 495 (iii) hear and decide appeals from administrative decisions of the historic preservation
496 authority.

497 (c) An applicant appealing an administrative decision of the historic preservation
498 authority may appeal to either:

- 499 (i) the historic preservation appeal authority; or
- 500 (ii) the land use appeal authority established under Subsection (1).

501 Section 5. Section **10-9a-703** is amended to read:

502 **10-9a-703. Appealing a land use authority's decision -- Panel of experts for**
503 **appeals of geologic hazard decisions -- Automatic appeal for certain decisions.**

504 (1) The applicant, a board or officer of the municipality, or any person adversely
505 affected by the land use authority's decision administering or interpreting a land use ordinance
506 may, within the applicable time period [~~provided by ordinance~~], appeal that decision to the
507 appeal authority by alleging that there is error in any order, requirement, decision, or
508 determination made by the land use authority in the administration or interpretation of the land
509 use ordinance.

510 (2) (a) An applicant who has appealed a decision of the land use authority administering
511 or interpreting the municipality's geologic hazard ordinance may request the municipality to
512 assemble a panel of qualified experts to serve as the appeal authority for purposes of
513 determining the technical aspects of the appeal.

514 (b) If an applicant makes a request under Subsection (2)(a), the municipality shall

515 assemble the panel described in Subsection (2)(a) consisting of, unless otherwise agreed by the
516 applicant and municipality:

- 517 (i) one expert designated by the municipality;
- 518 (ii) one expert designated by the applicant; and
- 519 (iii) one expert chosen jointly by the municipality's designated expert and the applicant's
520 designated expert.

521 (c) A member of the panel assembled by the municipality under Subsection (2)(b) may
522 not be associated with the application that is the subject of the appeal.

- 523 (d) The applicant shall pay:
 - 524 (i) 1/2 of the cost of the panel; and
 - 525 (ii) the municipality's published appeal fee.

526 Section 6. Section **10-9a-704** is amended to read:

527 **10-9a-704. Time to appeal.**

528 (1) The municipality shall enact an ordinance establishing a reasonable time of not less
529 than 10 days to appeal to an appeal authority a written decision issued by a land use authority.

530 (2) In the absence of an ordinance establishing a reasonable time to appeal, an adversely
531 affected party shall have 10 calendar days to appeal to an appeal authority a written decision
532 issued by a land use authority.

533 (3) Notwithstanding Subsections (1) and (2), for an appeal from a decision of a historic
534 preservation authority regarding a land use application, the applicant may appeal the decision
535 within 30 days after the day on which the historic preservation authority issues a written
536 decision.