#CITIESWORK

UTAH LEAGUE OF CITIES AND TOWNS

2021 UTAH LEGISLATIVE SESSION

TOP 3 LAND USE BILLS HB82, HB98 & HB409

SUMMARY AND ACTION

H.B. 82 Single-family Housing Modifications (Rep. Ray Ward, Sen. Jake Anderegg)

Legislative purpose of the bill:

HB82 encourages the development of additional accessory dwelling units (ADUs). It mandates that cities allow most residents to rent out basement apartments inside their single-family homes, although it allows most cities to exempt a quarter of their residential zones from this requirement — and gives them authority to license and regulate the add-on dwellings in limited ways in the remaining locations.

Quick Take:

This bill mandates internal accessory dwelling units (IADUs) as a permitted use with certain exceptions, enacts enforcement mechanisms, modifies the building code to exempt IADUs, establishes a loan program for IADUs, and prohibits a homeowner association from banning IADUs.

1. Makes internal ADUs permitted in all residential zones.
    a. Option to prohibit in 25% of primarily residentially zones areas, 67% in college towns.
2. Changes definition of single-family limit, strikes word “unrelated”
3. Adds new definition to LUDMA - Internal Accessory Dwelling Units. A new acronym IADU!
4. Prohibits regulation of IADU size, minimum lot frontage, or lot size except can prohibit on lots smaller than 6,000 sf.
5. Allows several requirements to be imposed if you so choose at the local level . Optional items include: one parking space, no change to exterior appearance, requirement of a business license, owner occupancy restrictions.
6. Allows recording notice of IADU on property, which then allows prohibition for short-term rental.
7. Establishes an entire separate process for IADU notice of violation and appeals process.
8. Changes egress window requirement for bedroom for IADU, allows requiring upgrade.
9. Makes State Construction Code changes for IADUs (IBC worksheet forthcoming)
10. Prescribes that HOAs cannot prohibit IADUs.

Deeper Dive:

The bill defines IADU as an accessory dwelling unit created within a primary dwelling, within the primary dwelling’s footprint, and for the purpose of renting for 30 consecutive days or longer. The primary

dwelling is a single-family dwelling in which the owner occupies the primary residence, and the dwelling is detached. In areas zoned primarily for residential use (a determination up to the municipality), IADUs are permitted uses. However, a municipality may prohibit IADUs in 25% or less of the total area in the municipality zoned for primarily residential, or, if a state or private university with a student population of 10,000 or more is located in the municipality, 67% or less.

A municipality may not establish restrictions on the construction or use of an IADU, including IADU size within the primary dwelling, total lot size, or street frontage. However, HB 82 allows a municipality to adopt the following IADU restrictions and requirements: require bedroom window egress, prohibit installation of a separate utility meter, require that the IADU design not change the appearance of the primary dwelling, require one additional on-site parking space and replace any garage or carport parking spaces if the IADU is created in the garage or carport, prohibit an IADU in a mobile home, require an IADU permit or license, prohibit an IADU if the primary dwelling is served by a failing septic tank, prohibit an IADU if the lot is 6,000 sf or less, prohibit the renting of the IADU for less than 30 consecutive days, and prohibit renting an IADU that is not in an owner-occupied primary dwelling.

To enforce IADU regulations, a municipality may file a lien recorded with the county recorder if the property owner violates IADU regulations, the municipality holds a hearing to determine that a violation has occurred, and the owner fails to cure the violation. A municipality may also record with the county recorder a notice of a permitted or licensed IADU. Finally, a municipality may prosecute or fine an individual who advertises an IADU as a short-term rental on a short-term rental website.

The above IADU provisions go into effect October 1, 2021.

HB 82 also modifies the definition of "single-family limit" in LUDMA so that whether individuals occupying a dwelling are related or not is irrelevant. HB 82 also modified the State Construction Code to create certain exemptions for IADUs for wall thickness, ventilation, and other changes.

By October 1, 2021, a municipality should review those zones that are primarily residential and adopt an ordinance permitting IADUs if they are not permitted already. However, if the municipality chooses to, the municipality should also identify a zoning district covering, as applicable, an area equivalent to 25% or less, or 67% or less, of the total area in the municipality that is zoned primarily residential and exclude IADUs in those areas. The IADU ordinance should also adopt any restrictions that the municipality finds necessary and appropriate under HB 82.

A municipality should also amend an ordinance setting a single-family limit based on whether individuals are related to each other and note the changes in the construction code for IADUs.

Read this story about ADUs: Will more basement apartments help ease Utah's housing crisis? Lawmakers think so / Legislature approves a bill that would force cities to let most residents rent out units inside single-family homes.

Resources: National ADU website / ADU guide for local governments

Effective Date: October 1, 2021 for ordinance updates and May 5, 2021 for rest of provisions

Affects: All Cities, Towns and Counties

Action : Legislative action and Administrative action.

Legislative: By October 1, 2021 you must update any current IADU ordinances you have for internal units to comply with these regulations. If you do not have an IADU ordinance you must adopt one by October 1, 2021. A municipality may elect to adopt the percentage requirements after the effective date, but if you don't do it by the effective date, 100% of your residential zones would allow IADU's until you designate that 25% or 66%. Update short-term rental and code enforcement ordinance.

A municipality should also amend an ordinance setting a single-family limit based on whether individuals are related to each other.

Administrative: Review new building codes changes with your Building Department.

HB98 Local Government Building Regulation Amendments (Rep. Paul Ray, Sen. Scott Sandall)

3/25 Update Governor Cox vetoed HB 98. We have attached his veto letter, which states that he supports the bill but issued a veto in response to concerns raised by FEMA and the National Flood Insurance Program. His letter further clarifies that the state is working with those groups to address disaster recovery provisions in the bill. The Governor intends to bring the bill back in a May special session and support it with the necessary changes.

Veto Letter

Legislative purpose of the bill:

This bill deals with building inspection and design review standards.

For building inspections, the law establishes, for a one or two-family dwelling or townhome only, clear timelines for a municipality to complete plan reviews and inspections. For design standards, the law prohibits a municipality from requiring certain design elements for a one or two family dwelling or townhome only.

Quick Take:

Building Inspection: Redefines the rules for building inspection provisions which:
a. Allows builder to hire own DOPL licensed plan checker/inspector only after the review deadline is not met. 3 days is the review deadline for towns and cities.
b. Defines complete building permit application in detail. Note: This is not the same as a complete application in LUDMA.
c. The plan review timelines stay the same as the prior legislation for a one to two-family dwelling or townhome. Note: There are potentially two deadlines on plan review: 14 days. If the city fails to meet the 14 days, *and the applicant then makes a request that the city get it done*, that triggers another 14 days, totaling in 28 days. **This is all current law.**

- An applicant may waive plan review time requirements or establish an alternative plan review time requirement.
- **Bill:** City may not enforce plan review requirement if the municipality
  - fails to meet the first 14-day deadline,
  - an applicant makes the request to finish the review,

- the city fails to meet the second 14-day deadline triggered by the request, and
- a licensed architect or structural engineer has stamped the plan.

Deeper Dive:

Building Inspection:
Under HB 98, if a municipality fails to provide a building inspection within three business days an applicant may engage an independent third-party licensed building inspector. The independent inspector must be licensed by DOPL, carry the appropriate liability insurance, and is responsible for issuing the certificate of occupancy for a project the independent inspector inspects. For plan reviews, if a municipality fails to complete a plan review within 14 business days, an applicant may request that the municipality complete the review, at which point the municipality has another 14 days from the request. If the municipality fails to meet the first 14-day deadline, an applicant makes a request to finish the review, and the city fails to meet the second 14-day deadline, a municipality may not enforce the plan review requirement if a licensed architect or structural engineer has stamped the plan.
A municipality may require a single resubmittal of plans to address deficiencies identified by a third-party in a geotechnical or geological report. Both the inspection and plan review requirements are applicable to one or two-family dwellings or townhomes. Finally, the bill lists information that creates a complete permit application.

Effective Date: May 5, 2021

Affects: All Cities, Towns and Counties

Action: Administrative: Review new provisions about what happens if you do not meet inspection deadline with your Building Department and make sure if you use an application form that it meets the new law.

Quick Take:

Regulation of Building Design Elements: Adds new Part to LUDMA that:
Prohibits regulation of building design for 1- and 2-family dwellings or townhome, with several exceptions:

- Historic districts established before Jan. 1, 2021 and structures in the State and National Register.
- Floodplain requirements set by FEMA.
- State Wildland Urban Interface requirements (UT 15A-2-103).
- Development agreements with design standards
- Residential areas developed before 1950.
- Water efficient landscaping requirements in rear yards.
- An ordinance that identifies defective cladding materials.
- Planned Unit Development plat or overlay zone granted for increased density or other benefit not available under the zone.

1. Removes residential design elements as option for moderate income housing plan strategies.

Deeper Dive:

Regulation of Building Design Elements:

HB 98 prohibits a municipality from imposing certain design requirements on a one or two-family dwelling or townhome. Those design elements are exterior color; type or style of exterior cladding material; style, dimensions, or materials of a roof structure, roof pitch, or porch; exterior nonstructural architectural ornamentation; location, design, placement, or architectural styling of a window or door; location, design, placement, or architectural styling of a garage door, not including a rear-loading garage door; number or type of rooms; interior layout of a room; minimum square footage over 1,000 sf not including a garage; rear yard landscaping requirements; minimum building dimensions; and a requirement to install front yard fencing. However, the bill allows a municipality to impose design elements in several enumerated circumstances, including a local historic district, elements agreed to under a development agreement, a dwelling located in an area substantially developed before 1950, and an ordinance requiring materials that are not defective, and in a planned unit development.

Effective Date: May 5, 2021

Affects: All Cities, Towns and Counties

Action: Legislative: 1. You must review your design standard regulations (zoning and subdivision) and see if they fall under one of the exceptions. If they do not then you need to modify your ordinances to reflect the new regulations for one or two-family structures and townhomes.

2. If you are subject to SB34 and the Moderate Income Housing Plan (MIHP) requirements and you selected the menu item for reduction in design standards then you must revise your MIHP and select another item if your design requirements don't align with these provisions.

HB 409 Municipal and County Land Use and Development (Rep. Steve Waldrip, Sen. Daniel McCay)

Legislative purpose of the bill:

HB 409 reflects the work of the 2020 ULCT Land Use Task Force, changing multiple provisions in Title 10, Chapter 9a Municipal Land Use, Development, and Management Act, including training requirements, development agreements, conditional use permits, Appeal Authority review, subdivisions and lot line adjustments, and low-impact storm water developments.

Quick Takes:

1. Requires PC members in communities of certain size categories to receive 4 hours land use training annually. The cities that are subject to SB 34 MIHP are the cities that must follow this law. The City keeps training records.
    a. 1 hour must be on general powers and duties of LUDMA. Newly appointed planning commission members may not participate in a public meeting as an appointed member until the member completes this one hour of training. ULCT will have an online class to help satisfy this requirement.
    b. 1 hour can be met by attending 12 PC meetings in calendar year.
    c. Other categories of land use training are suggested in the bill.
    d. Can be met by conferences, seminars, or in-house training.
2. Adds new section to LUDMA on Development Agreements (DA)

   a. Defines DAs.
   b. Specifies that DA adoption is a legislative process.
   c. Stipulates that requiring DAs as the only option to develop is not allowed.
3. Defines "substantial evidence" standard used in making land use decisions and appeals.
4. Stipulates that standards for conditional uses must be "objective."
5. Subdivisions and lot line adjustments:
   a. Stipulates that upon recording of subdivision plat, no new land use regulations can be applied to building permit applications in that subdivision for 10 years. This does not apply to any changes in the requirements of the applicable building code, health code, or fire code, or other similar regulations.
   b. Stipulates that subdivision plat amendments must preserve easements for sewer and culinary water.
   c. Makes extensive modifications to property boundary and lot line adjustment requirements and procedures.
6. Clarifies that enactment of a land use law (legislative) is not subject to appeal to an appeal authority.
7. Adds new section to LUDMA on Infrastructure Improvements Involving Roadways
   a. Specific to low-impact storm water developments (UT 19-5-108.5)
   b. Sets maximum standards for streets and fire access. Not greater than 35 feet in width.
   c. City must establish any standards that the municipality requires, as part of an infrastructure improvement, for fire department vehicle access and turnaround on roadways.

Deeper Dive:

Under HB 409, planning commissioners in SB 34 municipalities must complete four hours of annual land use training and a municipality must adopt objective standards for conditional uses. The bill prohibits a municipality, for a period of 10 years after the day on which a subdivision plat is recorded, from imposing on a building permit for a single-family dwelling in the subdivision any land use regulation that is enacted within 10 years after the day the subdivision plat is recorded. This prohibition is to address land use vesting issues.

The legislation defines "development agreement" and their appropriate uses. These provisions are a response to recent case law regarding prohibited contract zoning. The bill also prohibits a municipality from requiring paved residential streets wider than 32 feet if the municipality requires low impact development where the street is located. If a municipality vacates a street or considers a land use amendment, the rights of culinary water and sanitary sewer authorities are not impacted and, in some cases, those authorities must receive notice.

HB 409 amended several provisions to clarify lot line adjustments, boundary line agreements, and subdivisions. The clarifications include that a parcel boundary adjustment is not subject to land use authority review except in certain circumstances and that recording of a boundary line agreement does not constitute a land use approval. A municipality may withhold approval of a land use application that is subject to a recorded boundary line agreement if the lots or parcels are not in compliance with land use regulations. The bill also sets requirements for adjoining property owners executing a boundary line agreement and clarifies that a boundary line agreement that only affects parcels is not subject to land

use authority or engineering review. A municipal land use authority should further review these provisions for additional requirements.

HB 409 also makes some clarifying amendments to land use appeals, including codifying the existing case law definition of "substantial evidence" as evidence that is beyond a scintilla and a reasonable mind would accept as adequate to support a conclusion, and stipulates that standards for conditional uses must be "objective."

Effective Date: May 5, 2021

Affects: All Cities, Towns and Counties

Action: 1. Training: Know if you are one of the 82 cities that are subject to this law. Set up a plan for commissioners for training for 2021. Use the LUAU.gov website for ideas and training.

2. Development Agreements: If you have language in your code that authorized DAs then review and update to follow the new law.

3. New definitions and CUP language: Train your Commission and Council on how substantial evidence is applied and revisit your standards in any CUP ordinance to make sure they are objective not subjective. The League will have supporting material to assist you in this.

4. Subdivisions and lot lines: Review your current ordinances and adjust, as necessary. Make sure that all staff planners are aware of the new 10-year provisions, and, if not in place already, start a data base on the plat approvals.

5: Appeal Authority: No action required.

6. LID standards: If you have these standards, review, and update to ensure compliance with the new standards. If you want to establish any standards as part of an infrastructure improvement for fire department vehicle access and turnaround on roadways you must do so by ordinance.