#CITIESWORK

UTAH LEAGUE OF CITIES AND TOWNS

2021 Legislative Land Use Changes

Top 3 bills FAQ

Follow up from March 24, 2021 Legislative Update Webinar Chat box

Please always check with your City Attorney on the specifics as it relates to your own municipal code. This is meant as general advice from the League.

HB 82 - Internal Accessory Dwelling Units (IADUs)

Question: We are not a college town so we have to meet the 75% requirement. Can we select zones that are primarily residential and not include the 6,000 sq ft lots in the 25% exception? Or do they have to be included in the 25% exception?
Answer: A municipality may prohibit an IADU on a lot that is 6,000 sf or less that is located outside of the 25%/67% zoning district in which it chooses to prohibit IADUs.

Question: Does the bill specify how long the city has to verify if the application is complete or not?
Answer: No there is no time clock on processing the permit or determining completeness.

Question: Can CCRs prohibit IADU's?
Answer: No, under the bill they cannot.

Question: Can someone in an attached Condo or townhome in an HOA rent out their basement as an IADU?
Answer: The bill is specific to accessory dwelling units within a primary dwelling, which is defined as a single-family dwelling that is detached and occupied by the owner. An attached condo or townhome likely does not meet this requirement and therefore the IADU would not be a permitted use for that dwelling.

Question: Southern Utah communities allow, even encourage, casitas. Typically casitas are attached. Am I correct that a casita is now an IADU?

Answer: If you define casita as an accessory dwelling unit and it is attached then yes it is an IADU.

Question: Are there any limitations on what cities can require or charge for application/impact fees?

Answer: Fees must be based on the cost of providing the (regulatory) service.

Question: Can you clarify again whether a city may require an interior connection between the IADU and the primary residence?

Answer: You cannot require anything above what your requirements are if the residence was simply doing an addition. So, we would say no.

Question: If we already allow two-family dwellings as a permitted use in all residential zones, are we already compliant with this law?

Answer: If “two-family dwellings” are duplexes, you are not in compliance. If you allow IADUs in single-family dwellings, but have restrictions that don’t align with HB 82, you will need to revise those restrictions.

Question: Do you have any advice on reviewing and approving units that have been created in violation of zoning and without building permits prior to this bill as "new" IADU's?

Answer: If a property owner comes forward with an IADU located in “an area zoned primarily for residential use” that would have previously been illegal under the zoning but is now a permitted use under HB 82, the municipality must allow that IADU. If the IADU was also created without a building permit, but the owner is now trying to get a business license or other permit for the IADU, the municipality may require the property owner meet any regulations that are permissible under HB 82 to qualify for the license or permit but may not enforce additional regulations.

If an IADU is not located in “an area zoned primarily for residential use” and the municipality prohibits IADUs in that area or allows IADUs but has IADU regulations, or is located in an area zoned primarily for residential use but the municipality excludes IADUs as permitted under HB 82, the municipality may enforce any zoning or other regulations.

Question: If an applicant submits plans that violate the building code, is the City obligated to issue a permit? If so, where does liability lie for inevitable suits by the homeowner who had no idea the plan did not meet code?

Answer: No. The bill states that “an internal accessory dwelling unit shall comply with all applicable building, health, and fire codes.”

Question: Please clarify Building Code Changes. Does the change allow the ADU to share the same air with the primary building instead of a separate system? Health issues?

Answer: Yes it does.

Please see this summary and thanks to Vineyard’s George Reid and Cathryn Nelson of

Herriman for pulling it together.

- The amendments to the construction code provide uniformity of enforcement across the State. Building Code Officials are no longer in a situation where strict application of the International Residential Code (IRC) is prohibitive, if not impossible, to allowing for construction of an internal ADU.
- The primary dwelling must be occupied as the primary residence of the owner of record. This requirement is even more important with amendments to life-safety components.
- The IRC is amended to allow for less than the required 1-hour fire separation between dwelling units. Each side of walls and bottom of floors must be protected by not less than ½" drywall. This is already common practice in nearly all construction.
- The IRC is amended to allow discharge of return air from the ADU to the primary dwelling, and vice versa. This eliminates any requirements to have separate HVAC systems.
- The IRC is amended to remove the requirement that occupants of both dwelling units have access to the main electrical service to disconnect power. In older construction, while the meter socket is outside the home, the service disconnect is located somewhere within the home.

Question: Does the bill limit parking regulations to only 1 stall for the ADU, or can additional stalls be required? Regulating parking is important to control on-street parking, preserving the atmosphere of the neighborhood, and not interfering with the quality of life of neighboring property owners.

Answer: The bill limits you to only being able to require one stall for the IADU.

Question: HB 82 says that a municipality may require a primary dwelling to "to include one additional on-site parking space for an internal accessory dwelling unit, regardless of whether the primary dwelling is existing or new construction."

Answer: For purposes of the IADU, a municipality may not require more than one parking stall.

Question: Does the IADU allow owners to rent out individual rooms similar to a boarding house?

Answer: The bill does not address this other than an IADU is "for the purpose of offering a long-term rental of 30 consecutive days or longer."

Question: In general, how is an IADU different from a duplex or two-family dwelling? Did they draw this distinction?

Answer: An IADU is within a single-family dwelling that is detached and also owner-occupied.

Question: Is it intended that this bill legalize what are now illegal ADUS under some ordinances?

Answer: The bill is not retroactive (looking backwards). However, if an existing IADU is located

in an area zoned for primarily residential use, and that municipality does not exclude that location through the respective 25% or 67% exemption, the existing IADU is now a permitted use. The municipality may place restrictions on the IADU but only if those restrictions are in line with the permitted restrictions in HB 82.

Question: Will this bill help and improve affordable housing access?

Answer: TBD. It may not help provide more income restricted units but it may relieve some tension with units that had been historically rented but were taken off the market for short term rentals therefore putting more units at a mid-price point back into general circulation.

Question: Will the league have a template with new language to update our code?

Answer: As many of the provisions will require policy choices to be made at the local level we most likely will not but we will try to provide examples that may be of use to our members.

Question: Egress provision - in the case of an IADU that does not have an internal connection, and the only way into or out of the IADU is 1 doorway and the windows are very small and only open half way, they are sliding narrow windows that are not in compliance with the building code. Fire is worried about egress I the case of a fire blocking the single point of access. Does this new law mean we can't require larger windows for safety?

Answer: Check with your building inspector for now. We are not clear on that answer yet.

Question: Does this affect unincorporated counties as well?

Answer: Yes, the same IADU regulations apply to zones that are primarily residential in unincorporated county.

Question: What is the business license for?

Answer: A municipality may want to require a business license since the primary dwelling owner will likely rent out an IADU. The license also allows a municipality to ensure that the IADU complies with permitted regulations and is not rented as a short-term rental.

Question: So the internal adu can be larger than the primary residence?

Answer: HB 82 only says that the IADU must be created within the allowed footprint of the primary dwelling at the time the IADU is created.

Question: Since these definitions of IADU, etc aren’t in the bill, where are they?

Answer: The definition of “internal accessory dwelling unit” is included in the bill, but that definition also includes the defined terms “primary dwelling” (also in the bill) and “accessory dwelling unit” (previously defined in UCA 10-9a-103).

"Accessory dwelling unit" means a habitable living unit added to, created within, or

detached from a primary single-family dwelling and contained on one lot.

"Internal accessory dwelling unit" means an accessory dwelling unit created: (i) within a primary dwelling;
(ii) within the footprint of the primary dwelling described in Subsection (1)(a)(i) at the time the internal accessory dwelling unit is created; and
(iii) for the purpose of offering a long-term rental of 30 consecutive days or longer.

"Primary dwelling" means a single-family dwelling that
(i) is detached; and
(ii) is occupied as the primary residence of the owner of record.

Question: The "primary dwelling" has to be detached, so an attached condo or townhome can not have an IADU?
Answer: If a municipality wants to allow IADUs in an attached condo or townhome it may, but HB 82 does not require it.

Question: Can an internal ADU have a separate exit to the outside? Can the ADU be totally separated from the main dwelling- in other words- an internal ADU does not have to have access from within the primary dwelling?

Answer: Yes under the bill it can have separate exits and does not have to have internal access.

Question: Can you restrict the IADU size? can it be larger than the primary residence sq ft?

Answer: HB 82 says that the IADU must be created within the footprint of the primary dwelling at the time the IADU is created. It also says that a municipality may not restrict the size of the IADU in relation to the primary dwelling. So the IADU must be within the primary dwelling footprint but a municipality may not regulate how much of the footprint is the IADU.

Question: Would an ADU above a detached garage be classified as an IADU?
Answer: The definition of IADU is a unit created within the primary dwelling. A detached garage is arguably not part of that “primary dwelling” but a municipality should look carefully at its own ordinance definition and could still allow that type of ADU if desired.

Question: What if an owner lives in the IADU and rents the main house as a short-term rental?

Answer: The bill states in 10-9a-530 that IADU’s are not for use for 30 days or shorter. Internal accessory dwelling units.

140 (1) As used in this section:

141 (a) "Internal accessory dwelling unit" means an accessory dwelling unit created:

142 (i) within a primary dwelling;

143 (ii) within the footprint of the primary dwelling described in Subsection (1)(a)(i) at the

144 time the internal accessory dwelling unit is created; and

145 (iii) for the purpose of offering a long-term rental of 30 consecutive days or longer.

Question: Do Planned Community/MPD zones count as residential zones in terms of this bill?

Answer: The bill says “area zoned primarily for residential use” without further definition. A municipality should look how it has defined specific zones and determine whether they are “primarily residential.”

Question: Does this bill apply to all residential zones?
Answer: No, only those areas that are “zoned primarily for residential use.” If a zone has residential use, but the residential use is not the primary use within the zone, the bill does not apply to that zone.

Question: What is the difference between internal versus external ADUs?

Answer: An external ADU is typically not attached to the primary residence and, if so, is not subject to this bill.

Question: There is prohibition on the minimum size or that you can't cap maximum size?

Answer: The bill allows a municipality to prohibit an IADU in a primary dwelling located on a lot that is 6,000 sf or smaller. For the size of the IADU, the bill says that an IADU is, by definition, a unit created within the footprint of the primary dwelling at the time the IADU is created but the municipality may not set requirements on the size of the IADU within the primary dwelling.

Question: Could a city require additional garbage cans for a home with an IADU?
Answer: No, because that gets to the use of the IADU and it is not covered in the exceptions.

HB 98 (Building Inspections + Design Standards)

Note: HB98 was vetoed by Gov. Cox but is scheduled to be brought to a special session this spring. Gov Cox veto letter can be read here.

Question:Does the prohibition on design standards apply to detached ADU's on lots with a single family home?

Answer: We would say no as it is accessory to the main use.BUT If your ordinance defines a detached ADU as a one or two family dwelling, then yes

Question: What's the difference between "Townhomes" & Multi-Family?

Answer: Good question. Look to you own definitions but townhomes under IBC say they share a common wall and are more like SF homes.Multi Family are more like mid and larger size

apartment buildings. A town home won't have a unit above or below. The unit is owned from the ground or lot up to the sky. Multifamily units are almost always going to be zoned as multi unit with the whole structure being one owner, tax id, etc. In most places Multifamily can't be split to sell individually.

Question: If a jurisdiction requires a letter from a water company as part of the residential building permit application. Does the new language mean we cannot require that any more because it is not on the list?

Answer: The list in the bill of what is a complete building permit application is exclusive, meaning that a city/county can't require additional items and say the application isn't complete.

Question: What about Form Based Codes that have design, can we just require a development agreement? We don't measure density in form based codes...

Answer: The main point of a form based code is to not care about the density but the form. You can use a development agreement.

Question: Is the 3-day inspection deadline also 3 business days?

Answer: Yes, it is.

Question: Can a city still issue requirements for elevations in new construction in the absence of a development agreement?

Answer: If you need elevations to measure height then yes but for design review no.

Question: Does the bill specify how long the city has to verify if the application is complete or not? (Prior to the 14-day shot clock period)

Answer: The bill is silent about the time for a city to verify that an application is complete, but rather says that the application is complete if it includes everything required by statute. An applicant can arguably claim that, if the application includes everything required by statute, the application is complete and the 14-day clock has started.

Question: Does a developer have to hire an independent 3rd party plans examiner/inspector or can they employ one within their company that is certified by DOPL?

Answer: HB 98 says that, if a municipality fails to meet the inspection deadline, the applicant may "engage an independent third-party licensed building inspector." The "independent, third-party" modifier arguably means that the inspector cannot be an employee of the applicant, although the applicant may contract with a DOPL licensed inspector.

Question: How long does a city have to do a re-review. Example. Completed initial review within 14 days, needs corrections. Once plans are resubmitted do cities have another 14 business

days?

Answer: Unless an applicant agrees to an extension, a municipality that indicates corrections are needed cannot require a resubmission after the 14 days unless the resubmission is to address deficiencies identified by a third-party review of a geotechnical report or geological report.

Question: Municipalities cannot regulate design, but developers may still regulate design in their private covenants?

Answer: Yes, they may.

Question: I'm assuming design requirements negotiated during the annexation process and included in an annexation agreement would be the same as a development agreement. Is this a correct assumption?

Answer: Yes, we believe an annexation agreement with design element requirements are Development Agreements within the meaning of HB 409's new definition. In the context of LUDMA now with both the HB98 and HB 409 revisions, annexation agreements likely meet the definition of Development Agreements in most cases.

Question: What if inspections are being held due to conditions of approval not being met? (I.e no final inspection until retaining wall observation letters are submitted). Does this merit inspections being held for more than 3 days?

Answer: If we understand correctly, as long as it is bonded for and is not "essential to meet the requirements of the building code or fire code the Certificate of Occupancy must be issued. See 10-9a-802 below.

***UCA* 10-9a-802. Enforcement.**

(d) A municipality may not deny an applicant a building permit or certificate of occupancy because the applicant has not completed an infrastructure improvement:
(i) that is not essential to meet the requirements for the issuance of a building permit or certificate of occupancy under the building code and fire code; and
(ii) for which the municipality has accepted an improvement completion assurance for landscaping or infrastructure improvements for the development.

Question: Does the 14 day timeframe start over each time there is a correction needed on the plans?

Answer: No, unless the applicant agrees to an extension. The municipality should indicate any corrections within the 14 days. If an applicant fails to make the corrections, the municipality may still require correction at the building inspection.

Question:This is only for the review correct, not the issuance of a permit. If they have redlines, then the shotclock is over?

Answer: After 14 days, (or 28 days if an applicant makes a formal request for a completed review after the initial 14 days) a municipality must issue a building permit unless the applicant agrees to an extension. However, at inspection a municipality may enforce any violations that an applicant did not cure from redlines or otherwise.

Question:How do you prevent the developers getting the 3-day inspection before they have finished their city permit. This really opens the door for confusion.
Builders are telling planners that this allows them to get a building permit at the end of 14 days notwithstanding any issues with the plan and issues must be resolved at inspection.

Answer: Not sure on the first part; second part is same answer as above.

Question: If an initial property developer asks for an overlay or a new zone to provide additional density or other provisions not available under the base zone, thereby allowing the city to impose design requirements, can we still hold later property owners, or builders to whom lots are sold, to the design standards. Or do we have to do a development agreement for everything to bind future owners.

Answer: Traditional conditions of approval for PUD type requirements are an exception in the new statute. Our advice is that you do not "have" to have a development agreement, but we recommend using them for all PUD type situations that impose design guidelines. Please consult with your own attorney on this matter.

HB 409 Land Use Task Force Bill (LUFT)

Question: What is the population requirement minimum?
Answer: The population requirement is the same as the MIHP requirement in SB 34: all cities of the 1st, 2nd, 3rd, or 4th classes (e.g. cities with populations >10k) and cities of the 5th class with populations of 5k+ that are located in counties of the 1st-3rd class. The training requirement also applies to Metro townships with populations >5k and counties with unincorporated populations >5k.

Question: What if it is a land use change that the property owners want? If the change is reduced setbacks or increased height, the neighbors might not see it as a beneficial use.

Answer: The legislation is silent on that issue. HB 98 says that a “municipality may not impose on a building permit applicant for a single-family dwelling located within the subdivision any land use regulation that is enacted within 10 years after the day on which the subdivision plat is recorded.” It’s arguable that “impose” means a municipality may not unilaterally require

compliance with the land use regulation, but may impose it if the property owner agrees. Check with your municipal attorney.

Question: What if that land use change is a life safety issue?

Answer: The bill does not make an exception for life safety, although this provision does not apply to “any changes in the requirements of the applicable building code, health code, or fire code, or other similar regulations.”

Question: What happens if a planning commissioner does not complete their training.
Answer: If they don't get the first hour they can't vote. If they don't get the rest there is no penalty per say but let’s not have to have one imposed on us! The League will have available on May 5th, 2021 an online class that will fulfill the first hour requirement at luau.utah.gov.

Question: Is the road width requirement just pavement or the whole right of way?
Answer: Pavement does not include curb and gutter.

Question: Do we need to flag subdivisions since 2011 or just 2021 going forward

Answer: The bill is not retroactive so we would say 2021. To that end ULCT is working on resolving in a special session or general session the issues with the 10-year vesting in HB409.