



July 16, 2018

The Honorable Governor Gary Herbert  
350 North State Street, Suite 200  
PO Box 142220  
Salt Lake City, UT 84114-2220

Dear Governor Herbert,

On behalf of Utah's 247 municipalities, the Utah League of Cities and Towns (ULCT) applauds you for your willingness—and the willingness of legislative leaders—to convene stakeholders since March to improve SB 234. The day after the legislative session ended, ULCT submitted a letter requesting a veto of SB 234 because it violated core principles of local control: land use authority and responsibility for local property tax increment. The ULCT veto request letter also referenced our concerns about local consent, the size of the inland port area, public accountability, constitutionality, and potential precedent within other cities.

The proposed special session bill (draft bill dated July 13, time stamped at 4:36 pm, and herein referenced as the “special session bill”) is a good faith effort by state leaders to address to some degree of satisfaction or resolve each aforementioned ULCT concern. A brief analysis of how the concerns are addressed or resolved is spelled out below. ULCT supports the special session bill because it is a significant improvement over SB 234.

### **1) Land use authority**

The special session bill improves the land use language in SB 234 by narrowing the scope of the appeals board's authority, adding to the appeals board's standard of review, and becoming more consistent with the Land Use Development and Management Act (LUDMA).

#### **a) Scope**

The special session bill narrows the land use scope of SB 234 in three ways. First, it adds language that emphasizes that LUDMA still applies to “a municipality's processing of and decision on an inland port use application and a municipality's processing of and decision on an inland port use appeal.” The special session bill thus narrows the appeal authority of the inland port appeals board to only apply to “inland port use applications and appeals.”

Second, the special session bill narrows the scope of authority of the inland port appeals board. Under SB 234, the inland port appeals board could review any land use decision that an adversely affected person brought to the board. Under the special session bill, the inland port

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appeals board may only consider an “inland port use application” relating to a use of land within the authority jurisdictional land that is an inland port use.

Third, the special session bill specifically prohibits the inland port appeals board from reviewing several municipal requirements. For example, the inland port appeals board may not consider an appeal that “involves municipal requirements concerning the construction of public utilities; the administration of construction codes; the permitting and building plan review for a development project; the enforcement of a municipal code provision, unless the provision is inconsistent with the purposes of this chapter; or fees or fines.”

ULCT approves of language that ensures that any non-municipal land use appeals board does not have the authority to override traditional municipal authority as reflected in codes or revenues or that impact public health, safety, or welfare. The proposed special session bill is an improvement on SB 234.

#### **b) Time frame**

The special session bill creates new timelines independent of but nevertheless consistent with the spirit of LUDMA for the municipal land use authority to approve or deny a land use application (180 days) and for a municipality to review an appeal. The timelines ensure that a person must utilize the municipal land use application and appeals process first before the person can seek relief from the inland port appeals board. As such, the special session bill provides more legal deference to the municipality’s existing land use process under LUDMA.

Similar to LUDMA, the special session bill clarifies that a person’s inland port use application must be complete—defined as in compliance with all municipal requirements and fees—before the timeline clock starts ticking.

#### **c) Standard of review**

The special session bill improves but does not entirely resolve ULCT’s concern about a new standard of review for the inland port appeals board. Under SB 234, the appeals board can overrule the municipality’s land use decision if they determine that the decision is “detrimental to achieving or implementing the strategies, policies, and objectives (of the inland port); or substantially impedes, interferes with, or impairs authority jurisdictional land development that is consistent with the strategies, policies, and objectives (of the inland port).” In addition to the vagueness of that new standard, a land use applicant could argue that almost any municipal denial of a proposed inland port development project would be “detrimental” to implementing the strategies. That in turn would effectively render the municipal land use decision powerless.

The special session bill still creates a new and somewhat vague standard. The special session bill says that the inland port appeals board could find in favor of the person adversely affected by



the decision if the decision was “clearly contrary to the policies and objectives.” However, it does add two other standards that the appeals board may use, including a LUDMA standard of “arbitrary and capricious, or illegal.” The bill also provides the authority to stay an appeal in order for the parties to find resolution. On balance, the special session bill language about the standard of review, while not ideal, is still an improvement over SB 234.

#### **D) Due process for all parties**

The special session bill also improves the due process and procedure of the inland port appeals board. In SB 234, the appeals board “may hold an informal hearing to receive information and hear arguments from the parties.” That is the extent of the codified process, which lacks any due process protections for any party—property owners, applicant, the city—affected by the appeal. Meanwhile, LUDMA requires every municipality with an appeal authority to enact an ordinance to “respect the due process rights of each of the participants.”

The special session bill requires the inland port appeals panel to “hold a public hearing to receive information and hear arguments from the parties, provide notice of a hearing to the parties to the appeal and the public, and respect the due process rights of the parties.” Moreover, the special session bill then requires the land use applicant to provide in writing multiple stipulations about conditions ranging from impact on air quality and water quality, impact on abutting property owners, and the land use applicant’s proposed mitigation. Finally, the special session bill allows reviews either de novo—where the appeals board would have to create a new record—or on the record which would include some deference to the municipal decision. Consequently, the special session bill is a marked procedural improvement over SB 234.

#### **2) Tax increment**

ULCT is troubled that SB 234 usurps local authority, creates an unfunded mandate on the affected cities, and reduces accountability of how local tax dollars are spent. While the special session bill still takes up to 100% of the city’s property tax increment, the special session bill creates some guardrails for how the inland port board can spend the tax increment.

##### **a) Usurpation of local authority and unfunded mandate on the affected city**

The special session addresses the concern of one part of the city being forced to subsidize the inland port area. The new bill requires the “board to enter into an agreement with a municipality providing municipal services ... with respect to the appropriate amount of property tax differential the authority should share with the municipality to cover the cost of providing those municipal services.” While the special session bill retains the SB 234 language, which sets a terrible precedent of empowering the state to collect up to 100% of the city’s tax increment, the special session bill would also require the inland port board to use the municipal property tax increment to pay for the cost of services that the home city would provide. Likewise, the special session bill explicitly



adds new language to authorize the inland port authority to use the tax increment to “pay for municipal services that a municipality provides within the authority jurisdictional land; or to pay for other services that a taxing entity provides within the authority jurisdictional land.”

This provision would satisfy the ULCT concern that the rest of the city would be forced to subsidize the portion of the city where the inland port resides. The “up to 100%” language is still problematic and should be re-visited in future legislation.

### **b) Accountability to taxpayers**

The special session bill requires that the municipality—Salt Lake City, West Valley, or Magna Metro Township—must provide public services to the inland port authority land within that municipality. SB 234 was unclear about which government could provide services. As such, it is possible under SB 234 that the inland port authority could take the property tax increment from Salt Lake City and use those funds to contract with another police department to provide public safety services. Such a practice would violate the sovereignty, accountability, and local control of local tax dollars. The special session bill resolves that concern.

### **3) Local consent:**

ULCT members unanimously endorsed a resolution at our 2017 Annual Convention that declares:

2. Cities and towns cannot support development proposals, task forces, commissions, districts, *development authorities*, or other legislation that would deprive local municipalities of their traditional local land use authority on private property, or deprive them of control of tax increment generated within their jurisdiction *without their consent*. (italics added for emphasis)

The Salt Lake City mayor and council requested a veto of SB 234 on March 9, 2018. In the case of the special session bill, the Salt Lake City Council has expressed support of the policy direction. Our understanding is that Salt Lake City Mayor Jackie Biskupski does not support the special session bill because recent deliberations did not include more public process. West Valley City representatives have indicated to ULCT that they are comfortable with the efforts to improve SB 234. The support of the Salt Lake City Council of the special session bill is sufficient to satisfy the local consent component of the ULCT resolution.

### **4) Size of the inland port area**

The special session bill reduces the size of the inland port authority to exclude already developed land and nearly 4,000 acres of designated wetlands. The special session bill still needs some clarification on certain boundaries and ULCT wants to ensure that all affected municipalities are comfortable with the statutory boundaries, but we support these efforts to remove the wetlands and other land that should not be subject to port authority jurisdiction.

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### **5) Public accountability:**

The special session bill clarifies that the Salt Lake City council member must be the elected official who represents the airport. The intent of the new language is to ensure that the council member who is elected by residents nearby the inland port and represents much of the area within the inland port authority is an official member of the board. While Salt Lake City appointments are still only two of the eleven voting board members—West Valley City has one voting member and the Salt Lake City mayor is still excluded from the board—the special session bill creates advisory committees which will include more representatives from “impacted public entities.” ULCT urges more inclusion on the board of the municipal taxing entities and land use authorities. That said, the special session bill is an improvement over SB 234.

### **6) Constitutionality:**

ULCT opposed SB 234 in part because of concerns that it was unconstitutional. Article VI, Section 28 of the Utah State Constitution prohibits the legislature from delegating to any special commission any power to make, supervise, or interfere with any municipal improvement, money, property, or effects, whether held in trust or otherwise, to levy taxes, to select a capitol site, or to perform any municipal functions. While the special session bill may still violate that constitutional section, the special session bill significantly narrows the scope of duties and authority of the inland port board.

### **7) Potential precedent:**

ULCT remains extremely concerned that the Legislature could take the land use and tax increment language in SB 234 and utilize it for other development projects in place of traditional municipal authority over land use and property tax. ULCT is thus pleased that the special session bill narrowly focuses on specific conditions that are directly related to the development of the inland port and mitigation of the inland port’s impacts. The narrow language reflects the legislative intent for this land use appeals process, property tax increment collection, and environmental conditions and mitigation to apply only to the development of an inland port. ULCT would oppose any attempt to impose the special session bill framework on another development proposal without the consent of the affected city per Resolution 2017-001A (see section 3 above).

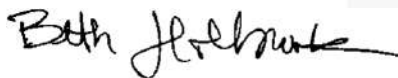
### **Conclusion**

ULCT remains concerned that the framework of both SB 234 and the special session bill could be replicated on other development proposals. We have often heard from state leaders that the inland port is unique and thus requires a unique accompanying legal framework. Speaker of the House Greg Hughes presented the concept at the Capitol on February 1, 2018. As reported in the

Deseret News<sup>1</sup>, he said “what if we caught this vision, and, unique to the state of Utah and its proximity to transportation infrastructure, we got ahead of this and did something in the western United States that hasn’t been done before?” As reported again in that same Deseret News article, Val Hale, the Executive Director of the Governor’s Office of Economic Development, added that Utah has the opportunity to “do something that’s unlike anything else” and become the “crossroads of the world.” We take the Speaker and your representative of GOED at their word: the inland port is unique. Likewise, the legal framework spelled out in SB 234 and the special session bill is meant exclusively for the inland port authority and not for other potential development projects. Per the aforementioned Resolution 2017-001A, ULCT would oppose efforts to create development authorities that impact local land use and tax authority without the consent of the affected city.

In this case, the Salt Lake City Council has expressed support for the direction of the special session bill. Likewise, the proposed special session bill either addresses to some degree of satisfaction or resolves each concern that ULCT raised in our veto request letter. ULCT appreciates the dialogue to date and supports continued stakeholder engagement to improve the proposed special session bill as experience and practice dictate. In conclusion, ULCT supports the special session bill because it is a significant improvement over SB 234.

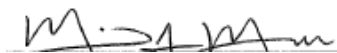
Sincerely,



Beth Holbrook  
Council Member, Bountiful  
ULCT President



Jon Pike  
Mayor, St. George  
ULCT 1<sup>st</sup> Vice President



Mike Mendenhall  
Council Member, Spanish Fork  
ULCT 2<sup>nd</sup> Vice President



Steve Hiatt  
Former Mayor, Kaysville  
ULCT Immediate Past President

<sup>1</sup> Hughes makes surprise pitch of inland port authority to Salt Lake City, Deseret News, Feb. 1, 2018; retrieved at: <https://www.deseretnews.com/article/900009214/hughes-makes-surprise-pitch-of-inland-port-authority-to-salt-lake-city.html>