

## Subdivision Ordinances

Subdivision ordinances are one of the tools given to cities and towns. They accomplish two general purposes: First, they help a city or town implement the general plan; and secondly, they provide some level of consumer protection to would-be buyers of new lots. A typical subdivision ordinance will set requirements on a land owner that the land owner must meet before the land owner is allowed to record a subdivision plat with the county recorder. This is important to the landowner because it is illegal for him or her to sell lots before the plat is recorded.

Having a subdivision ordinance is not mandatory, it is optional. However, if a city or town chooses not to have a subdivision ordinance, the provisions of the state code regarding subdivisions will become the regulations for subdivisions for that city or town.<sup>1</sup> This situation results in every city or town having at least some body of law under which a land owner can subdivide under municipal regulations.

A subdivision is defined by the state code to be any land that is divided, resubdivided, or proposed to be divided into two or more lots for the purposes of offer, sale, lease, or other development. It includes any division or development of land for residential or nonresidential purposes including land to be used for commercial, agricultural, or industrial purposes. The exceptions to this definition include any real division of agricultural land for the purpose of joining one parcel to a contiguous parcel of unsubdivided agricultural land. A recorded agreement between owners of adjoining unsubdivided property adjusting their mutual boundary if no new lots are created, or a recorded document executed by one owner revising his legal description or adjoining two of his own parcels together is also exempt.<sup>2</sup>

The process to enact a subdivision ordinance is a two-step process. The planning commission is required to prepare and recommend a proposed ordinance to the city council. The planning commission must hold a public hearing on the proposed ordinance before making its final recommendation to the city council.<sup>3</sup> The city council does not have to hold a public hearing. But it may if it wishes. Notice of the public hearing must be given at least ten calendar days before the public hearing and posted in at least three public places within the city or town. In lieu of posting, the public hearing can be noticed on the city's or town's web site.<sup>4</sup>

The city or town council may adopt or reject the ordinance as proposed by the planning commission or it may revise the recommended ordinance and then adopt it as amended.<sup>5</sup>

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<sup>1</sup> Utah Code 10-9a-601.

<sup>2</sup> Utah Code 10-9a-103 (50).

<sup>3</sup> Utah Code 10-9a-602.

<sup>4</sup> Utah Code 10-9a-205.

<sup>5</sup> Utah Code 10-9a-602 (2).

When a land owner desires to subdivide his property, he must comply with the city or town subdivision ordinance. If there is no ordinance, then he must comply with the minimum standards in the state law. The state law generally requires that a plat be prepared by a licensed surveyor. The plat must have a name, set out the boundaries, course, and dimensions of the land, lay out and dedicate the streets and public places, and set out the lots. The plat must also show the necessary easements for public utilities.

A city or town can have additional requirements for the plat, but not more lenient requirements. Any plat proposed by a landowner must be approved by the supplier of culinary water and the supplier of sanitary sewer. This requirement is to protect future buyers. It ensures that whoever buys the land will be able to actually build on the property and have water and sewer available. Obviously, in an area that does not have sewer, the plat must be approved by the body that allows and approves other systems such as septic tanks.

A city or town does not have to hold a public hearing on the plat before it is approved. The old law required one so many ordinances still contain that requirement. If the city or town ordinance still has this requirement it must be followed.

The state code requires that if the ordinances and the state law have been complied with, then the plat must be approved.<sup>6</sup> The city or town can condition the approval on the land owner getting tax clearance evidence showing that all property taxes are current. This can be important because if the plat dedicates land to the city or town for a park or other public space and the taxes are not current, the county will still collect the back taxes against that newly dedicated public property even though it is now owned by the city or town.

The state code does not say who in the city or town has to give final approval of the plat. This is determined by the city or towns own land use ordinances. A city or town could have subdivision plats finally approved by the planning commission or city council or, even theoretically, by an individual assigned to do so in the city. It is required, however, that all approvals are entered in writing on the plat by the designated city or town officers. The plat is recorded with the county recorder's office. The plat is required to be recorded within the time period set out in the city or town ordinance. if it is not, the plat is voidable.

The state code does have some plat exceptions. The principle exception is for subdivisions of ten lots or fewer. These are sometimes referred to as minor subdivisions. Even if a development is proposed for fewer than ten lots, it will still need a plat if it requires the dedication of any public street or place. A minor subdivision must still be approved by the culinary water and sewer authority and must not violate any zoning ordinance. While minor subdivisions do not require a plat,<sup>7</sup> they do require a record of

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<sup>6</sup> Utah Code 10-9a-603(2).

<sup>7</sup> Utah Code 10-9a-605.

survey.<sup>8</sup> This may not be much of an advantage to a landowner as a record of survey may cost as much as a plat.

The city or town is faced with enforcing its own subdivision ordinances. No one else is going to do it for you. Very often landowners will just record deeds in the county recorder's office without subdivision approval. The county recorder is required to accept these documents. The deeds are valid transactions. However, these deeds do not create approved lots unless a city or town certifies them.<sup>9</sup> This creates a difficult problem for a city or town. The lot has been created, the property transferred to a new owner, and the deed recorded but no legal building lot has been created. The only way a city or town can effectively enforce the subdivision and zoning ordinances is to deny building or other use permits until such time as the lot is brought into conformity with the local ordinance. This may require a city or town to tell an innocent purchaser of an illegally divided lot that his or her only recourse is to go back against the person who sold them the lot. In many instances the illegal division of land is done innocently. It may be the result of a divorce, estate settlement, or just ignorance. However, no matter how sympathetic the situation, if a city or town wishes to have enforceable land use ordinances, it cannot treat the innocent any differently than the guilty. A substandard lot is a substandard lot.

Once a plat is recorded two things happen: First, the public uses and places indicated on the plat are dedicated to the city or town; and secondly, the lots can now be legally sold. The law specifically provides that the city or town does not have any liability to improve a dedicated but unimproved street just because it is shown on a filed subdivision plat and dedicated to the city or town.<sup>10</sup> However, the buyers of the new lots will certainly expect that someone is going to see that the streets and parks are finished. The usual method of seeing that the public places are finished is to condition the approval of the subdivision plat on either the completion of the public improvements in a manner that satisfies city or town standards or to require that the developer post with the city sufficient money or a surety bond to guarantee that the subdivision improvements can be completed. If you do have a surety or warranty bond it cannot be for longer than one year after the subdivision is completed and accepted unless some very special conditions exist. In other words once a subdivision is done and the city accepts the improvements the city cannot require the developer to warrant the quality of his work for longer than one year.

The streets and public places are now yours, but they are not yours to do anything with them that you wish. The dedication is for a specific purpose only. The city or town has what the lawyers call a defeasible interest in the property. If the city or town decides it no longer needs the street or park, the city or town cannot just sell it or use it for some other purpose the street or park goes back to the landowners.

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<sup>8</sup> Utah Code 10-9a-605(2)(b).

<sup>9</sup> Utah Code 10-9a-605(3).

<sup>10</sup> Utah Code 10-9a-607.

## Amending a Subdivision Plat

Sometimes it is necessary to amend or vacate a recorded subdivision plat.<sup>11</sup> This process may be started by either a petition or by the city or town itself. The first step is to have an ordinance or something that identifies who or what in the city or town is the land use authority for these decisions. It could be the planning commission, staff, or council. Or may be it will be different for different kinds of amendments.

The process is started by petition that contains the name and address of all owners of property contained in the plat; the name and address and the signature of each of the owners that consent to the petition. A petition can be filed by any owner of land within the subdivision.<sup>12</sup> If the petition is signed by all of the owners of land within the subdivision, then the matter can be set for public meeting before the person or entity designated in the city or town's ordinance as the land use authority for these types of decisions. If the petition is not signed by all of the owners then a public hearing must be held and notice of a public hearing must be given. If the proposed amendment does not involve the vacation of a public road, then the notice of the public hearing need only be given once, ten calendar days before the public hearing by mail to all record owners within the subdivision, and by posting not less than ten calendar days before the public hearing on the property within the subdivision. The posted notice must be in a visible location and of sufficient size, durability and print quality that a passerby can see what it says.<sup>13</sup> If the proposed amendment involves the vacation of a public road, a more substantial notice is required. This will be discussed in the next section of this handbook.

No public hearing is required and a land use authority may consider at a public meeting an owner's petition to alter a subdivision plat if the petition seeks to join two or more of the owner's contiguous, residential lots; and notice has been given to adjacent property owners and pursuant to local ordinance.

The owners of record of adjacent parcels that are described by either a metes and bounds description (that is when the description says things like "beginning at a point and thence north" rather than just saying "lot five of Plat A") or a recorded plat may exchange title to portions of those parcels if the exchange of title is approved by the land use authority. The city or town must approve the request if the exchange of title will not result in a violation of any land use ordinance.

Once the exchange of title is approved a notice of approval is recorded in the office of the county recorder. This must be signed by each owner included in the exchange and by the city or town and contain an acknowledgment for each party (a notary type of signing). This notice must recite the descriptions of both the original parcels and the parcels created by the exchange of title. A conveyance of title (such as a deed) reflecting the approved change must also be recorded in the office of the county recorder. The notice

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<sup>11</sup> Utah Code 10-9a-608 (1).

<sup>12</sup> Utah Code 10-9a-608 (3).

<sup>13</sup> Utah Code 10-9a-207.

of approval recorded is not sufficient to actually change the title to real property and is not required for the recording of a document purporting to convey title to real property.

A name of a recorded subdivision may also be changed by recording an amended plat making that change. An owner of land may not submit for recording an amended plat that gives the subdivision described in the amended plat the same name as a subdivision in a plat already recorded in the county recorder's office. Once the city approves the amended plat a surveyor must prepare and sign the amendment. The surveyor preparing the amended plat must certify that the surveyor holds a license in accordance with Title 58, Chapter 22, Professional Engineers and Professional Land Surveyors Licensing Act; has completed a survey of the property described on the plat in accordance with law and has verified all measurements; and has placed monuments as represented on the plat.

The city or town's land use authority may approve the vacation, alteration, or amendment of a plat by signing an amended plat showing the vacation, alteration, or amendment if the land use authority finds that there is good cause for the vacation, alteration, or amendment; and that no public street, right-of-way, or easement has been vacated or altered. The land use authority must ensure that the amended plat showing the vacation, alteration, or amendment is recorded in the office of the county recorder in which the land is located.<sup>14</sup>

If an entire subdivision is vacated, the legislative body shall ensure that a legislative body resolution containing a legal description of the entire vacated subdivision is recorded in the county recorder's office.

Any person that thinks the city or town has made a mistake in approving or denying a plat amendment can challenge that decision before the city or town's appeal authority and eventually in state district court. This must be done timely and usually within 30 days from the city or town's final decision on the matter.

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<sup>14</sup> Utah Code 10-9a-609.