

# 2016 ULCT Land Use Update

Do Your Codes Really Do What You Think They Do?

# Context is everything

- ▣ “Techy” legislators with award- winning transparency websites
- ▣ 10 year push for Transparency/Accountability
- ▣ Decriminalization push
- ▣ 161 PPO advisory opinions → fewer judicial mandates
- ▣ LUTF shortcomings/successes
- ▣ Leadership warnings—akin to 2004
- ▣ Messaging: “Death by 1000 cuts”

# Shall not “ENFORCE, ENACT OR AMEND”

- ▣ Beekeeping
- ▣ Falcons
- ▣ Historic Districts
- ▣ License Home Occupations
- ▣ Short Term Rentals
- ▣ Outdoor landscaping
- ▣ Marijuana dispensaries
- ▣ Ag buildings
- ▣ Homeless shelters
- ▣ Housing authorities

# Conditional Use

Old: Subjective

**May** approve, deny or  
approve with conditions

Current: Objective

**Must** approve if conditions can  
**substantially mitigate** detrimental  
effects to **comply with**  
**applicable standards.**

**“THE PROBLEM IS NEVER  
HOW TO GET NEW,  
INNOVATIVE THOUGHTS INTO  
YOUR MIND, BUT HOW TO GET  
OLD ONES OUT.”**

**DEE HOCK. FOUNDER AND FORMER CEO OF VISA**

# 2016 Session: Short Term Rentals

- ▣ 50 Freest Cities—Fact Check
- ▣ On call response gave only half of the story: “If is is not listed, it is prohibited . . .”
- ▣ Initial “No” undermines credibility—
  - ▣ Defeats all but the most belligerent
  - ▣ Overstated Need for Legislation
  - ▣ System that ultimately gets it right—but only if you sue-- is Indefensible
- ▣ Regulating Land Use with Business License
- ▣ High impact/low impact divide—stay tuned

# The other half:

1. Restrictions are “strictly construed” in favor of an applicant’s common law right to unrestricted use of property.
2. Ambiguous land use restrictions are construed in favor of the proposed use.
3. A land use restriction is ambiguous if it can be understood by reasonably well-informed persons to have different meanings.
4. A land use restriction does not prohibit a proposed land use if a reasonably well-informed person could interpret the restriction, or another applicable regulation, to allow the land use.

# Concerns/Observations

- Technology has exposed that many cities have not annually updated land use codes to comply with enacted law
  - Do we have a systemic failure to follow through?
- Local Misperceptions:
  - Status quo is acceptable;
  - Ambiguity provides more control
  - Legislature will provide a better solution than we can
- Need objective land use ordinances to confront and resolve local policy before individuals apply for a use
- Recodification is boring, technical, time consuming and expensive:
  - What will make it a priority?
- **Local Land Use Control is at risk if we don't step up to the challenge**

When the Why Is Clear  
The How Gets Easier

# How Do You Eat An Elephant?

- ▣ Criminal penalties for Land Use Code violations
- ▣ Are there any zones that include a conditional use that your City expects to deny?
- ▣ Does a word search of any of the following terms yield a “result”:
  - ▣ “approve, deny or approve with conditions”
  - ▣ “compatible”
  - ▣ “in its sole discretion”
- ▣ Could a reasonable person interpret your land use restrictions differently?
- ▣ Do important provisions rely on staff discretion for interpretation ?
- ▣ Does your Council issue Conditional Use Permits/Subdivisions?

## One Bite at a Time . . .

- ❑ Does Council attend Planning Commission meetings? Sit on the Planning Commission?
- ❑ Are development fees based on a % of construction value?
- ❑ Are staff reports sent to applicants at least three days before a hearing/meeting
- ❑ Does your code postpone vested rights?
- ❑ Are subdivision/engineering standards codified?
- ❑ Does your code use active voice? Or passive voice? (unclear)
- ❑ Have you updated your Impact Fees in this decade?

Challenge is Inevitable  
Defeat is Optional  
Choose Success!