

Legislative Policy Committee

Utah State University 12/12/2016

Welcome from Beth Holbrook Bountiful City Council, VP Utah League. She thanked Utah State for their efforts and acknowledged 28 locations online.

Vote taken on September and October 2016 minutes. Call for questions or amendments, none presented. Mayor Dolan approved and Mayor Hiatt seconded.

Announcement by Nick (ULCT) about the Utah Benchmarking Project. Cost usually is \$500, but this year it will be offered for FREE so that everyone can see what it offers. User Agreement was handed out will be made available for sign up.

Matt Dixon of South Ogden encouraged city managers and administrative staff to take a closer look at the data available to help them make better decisions. Data from partnerships with BYU, University of Utah, Utah City Management Association and Utah League. Some possible items to look for are response times compared to other cities, revenue, expenditures, and developed park acreage. A host of collected information will be provided free of charge this year so their communities can be involved. Contact Nick and League staff to be involved.

Susan Wood/Ken Bullock announced their Deseret News project. It was launched 11 weeks ago, and was four years in the making. Agreement with Deseret News.com to host a story added by the ULCT. Intent to feature stories that their constituents would care about. Will be located A1 above the fold next to prominent Deseret News stories. Permanent prominent position part of the agreement. ULCT information is perceived as worthy news stories.

< Video shown > Susan in the video explained the categories available on the website and what information is contained in each tab/link about city information. Site also contains trivia and quizzes to test knowledge.

Results thus far: 24 stories and 4 quizzes, 30,600 page views, 381 shares of content a good number. People spending average of 2.5-2.45 seconds on the site seeing the logo and reading about issues. Quizzes popular with 80% completion rate, 8,675 times taken with 40 shares.

Ken Bullock talks about determining baseline of what people know about cities and towns. Looking for cities to put these stories on each of their individual websites. Information that is generic enough to share. Ken Bullock may be going to each person individually to get their ideas about what is happening in their communities. Susan mentioned they want this information shared and posted to facebook, share the resource and message of what is happening in their cities and towns. Ken wants to take advantage of Pres. Valentine being in attendance to do story on online sales tax, also Robert Spendlove doing a story talking about Christmas spending and the loss of sales tax due to online spending. Plans with legislative issues, importance of telling your side of the issues and a different perspective.

Chairman Valentine of tax commission said he has stood at the podium many, many times, and remarked about being in the public light. As chairman of tax commission everything became confidential, so he can't talk about it. Had two hearings where he followed rules of evidence

and procedure listening to appeals - direct appeals based on what he does in the tax commission so he now has the mentality of a Judge. Over the last couple of years, he negotiated over 2,300 collective bargaining agreements, he gets 2-3 of these a day to review and decide to enter agreement with tax payers. There is now a major shift to start collecting sales from remote sales, not just online, but catalog, 1-800 number sales, and from others that do not have situs but are selling to people in our state.

About Amazon, some portions he cannot talk about due to confidentiality agreement, but some items he will discuss. Beginning, January 1 state and local tax will be collected by Amazon as though they were a vendor here in the State. He emphasized local tax. He was charged by the governor to make sure locals received their share of the tax collected and not leave them behind. The rate will be determined by zip code. The tax will be different depending on where someone is in the state.

He then took questions from the audience:

Q: Gary Hill, City Manager of Bountiful City, asked about which zip code will be used-based on CC used or where delivered. Answer was that it will be based on destination zip code. There are places where you can cheat the system. Debate in Congress now origin based, destination based or clearing house based. They felt in Utah destination seemed the fairest, where will it be used, where was it delivered. On a whole this seemed a fair allocation.

Q: Online read aloud: Erin Wells Highland City, how will it work with jurisdictions with multiple zip codes? Answer will still be based on allocations done by zip codes. There are some zip codes that cross city lines, they are working on this issue.

Q: Gil Miller: Many share zip codes with a city they are close to... Tremonton, Ellwood, Brigham, Manaway where there are not separate zip codes. The answer is that they have a way to use four digit extensions and Amazon has told us they are working on it.

Q: Katie McKeller from Desert News noticed he stopped short of saying local sales tax, and asked if that includes transit sales tax and how much of impact is estimated for internet sales total and does that include transit and sales tax? Answer to the two questions is it does include transit tax same as the destination. The second part of the question is still being worked on. Determine effect of the expansion of trying to get remote sellers to come in and start selling. Different numbers out there that may or may not be accurate. Has asked Economists to create some modeling to determine how to do some collecting with Amazon as model on how they would collect if they had more robust sample. Made an agreement with Airbnb to start collecting sales tax and transit room tax, allocated again based on zip code based on rental property. This will also have positive impact to transit room taxes for local communities.

Q: Mayor Dolan. What amount of money will go to local governments, now it is 1%? Answer 1% less of 1.31% of the 1% sales tax.

Q: An unknown individual said if they bought a gift from Target, they would pay sales tax, but if they buy on Amazon and then ship it, then I might not pay sales tax. Is that correct? Answer, yes that is possible.

Q: Jake Garn from Kaysville asked if fiscal situs is the reason these companies do not collect taxes, what is status of changing situs rules in light of how much goes to online sales? By two factor formula, tax commission was favoring adding payroll tax? 50% population 50% point of sale formula. The POS portion is allocated by zip code, the rest goes into the pot for allocation, this will not change. The streamline sales tax project has taken up the issue of creating uniform definitions for sales, trying to be sales tax compliant. Commissioner Rockwell to head up efforts to work on the sales tax project, and bring real world perspective of what staff and legislators look at for this issue. Chairman Goodlat and Chairman Chaffetz with respective competing bills, the federal solution would be best. National definition, national allocation of proceeds, solving clearing house destination issue.

Q: Diane Foster, City Manager Park City asked about categories of things that would remain confidential? Answer - Identity and individual amounts being paid will remain confidential, just like they would be in membership. What to do about room tax is still being worked on. Working with other major players, Airbnb just happened to lead out on this issue. Negotiating with other parties that have homes for rent organizations.

Ken Bullock thanked Chairman Valentine for his availability and willingness to work with them. The Governors future tax policy committee is working on new rules and process being for local and state government as it relates to this new economy.

Agenda modified slightly

Land Use Task Force, Representative Mike Schultz to talk briefly about land use issues. There were some direct conversations with President Niederhauser, Speaker Hughes, and Representative Wilson about some issues the development community has about why local governments do what they do. This is the culmination of a year's work on this issue. Took position to support direction.

Gary Crane from Layton told a story about being in a conference for land use issues several years ago, where the west coast just passed a referendum that in all zoning issues any reduction in property needed to be fully compensated, this was a devastating blow. They had attorneys from all sides present. The development attorney said the reason they did this was that nobody was listening to them before so they had to put it on the ballot. Years ago, Utah determined they never wanted that to happen in Utah. They put together a group that works as a land use task force, meeting together in the summer to discuss ideas they think will make land use laws work better. He discussed the distinction in this state with forms of government: there is the six-member council and then a switch between a legislative body of government and the legislative body of government. The other form is the strong mayor form of government and then the council. This confuses everybody, especially in the land use arena. So this summer they tackled the issue. What they did was to try to maintain ability to pass land use regulation with minimum standard (rational basis standard), but also to put into place a clear standard for administrative acts. There is also a quasi-judicial, that most will not have to worry about. After 30 meetings this was put together: Reaffirmed cities right to pass ordinances that are customized to jurisdiction, codified ability to be able to clarify ordinances-make good and clear ordinances that can be administratively looked at. When you apply an

ordinance that you have already passed, to a set of facts that is an administrative decision. There are many elected officials and individuals in the courts and that don't understand the distinction, when we put together a set of laws that apply to a set of facts we want a jurisdiction to make sure those are clear. When they are clear the decisions will be upheld as valid, when they are not clear the courts have said they will defer to decisions that you may not like or have anticipated, because the ordinance was foggy or unclear. We are going to look at our ordinances to make sure they are clear and up to date.

Rob Wall told about a case in 1998 where a homeowner in Sandy rented out a home, there was a Sandy ordinance which had a lot of general intent language from the general plan in the code but did not expressly prohibit short-term rentals. The Supreme Court has said "Sandy you did not expressly prohibit it, and if you are going to regulate property, you do it in derogation of a person's property right, therefore you have to tell people what you are and are not going to do." Subsequently, Sandy City amended its code and now expressly prohibits short term rentals in context of residential homes. As many of you know, thanks to Jodi Hoffman and the League, there was a lot of research done over the last year and a half on short term rentals. They looked at 70 cities and towns, they contacted them and found 9 lawfully prohibit short-term rentals. The other 61 are not doing it correctly. This brings up another issue, Standards of Review. We have not figured it out yet. So because of those two issues the Standards of Review and this issue of Clear Codes, there continues to be a lot of angst on the part of the development community. This is what led up to this discussion that Ken and his staff had earlier with the legislature. Rob referenced the slides put out by the League that summarizes what the bill does. Encouraged everyone to take a good look at it, and said it does a good job of explaining everything. He offered two things in thought, one a story and one a photograph. In 1993, West Valley City had a tragedy where a little girl named Misty Lee Braithwaite was killed while walking in West Valley in a place where there was no sidewalk. WVC took position it was not obligated to build sidewalks. At the time it would have cost tens of millions of dollars to build sidewalks in the city, so the city took exception to the claim and litigated the case and won twice in District Court and it was appealed twice to the Supreme Court, and the city won again. On the third time back at District Court the parties decided they were tired of fighting and they settled the case. For 17 years, thanks to West Valley and very good litigator there was a predictable standard in place for cities as it relates to maintenance of sidewalks. As long we inventory those sidewalks on some kind of regular basis, and as long as leg body decided they would spend x amount of dollars fixing sidewalks and they were prioritized cities could not be liable for every trip and fall on the sidewalks. In his option that was very fair to the taxpayer and the city. Unfortunately, the last 4-5 years that principle has been eroded. Second story is picture of the California Code it is 408 volumes shown on several shelves. Utah Code is 31 volumes take two shelves. This is due to the fact that CA legislature is a full time legislature. The land use regulation in the CA code, the impact would fill all 31 volumes of the Utah code. Attributable to the fact that CA does not do what Gary described, deliberately look at these issues and not try to fight them out in the 45 days on the hill. That is far too expensive. A good example of that is the transportation bill, in the eleventh hour changes were made to a bill that was very well vetted, and you all know the consequences to that, it was painful. So we have three choices: 1-We can partner with the League and, go through the pain we went thru this

summer, and work out something that is expectable although not everyone is happy with it. Will never be perfect. 2-You and your Cities can go to the hill and fight it on your own. 3-Do nothing. In my view the best choice is the first one. It is not easy, in my City, wants me to be involved with the League, but I understand it is difficult to engage. Engage where you can or on your own. I would rather take my chances taking a summer to negotiate the issue as opposed to death by a 1,000 cuts (16 Land Use Bills). We spent the summer on 1. Have your City Managers and Lawyers look at this, keep in mind the people involved, that looked at this. Incredibly well vetted and I would encourage you to support what was produced.

Rep. Schultz started by saying he just finished serving his first term. When he came into the legislature, Speaker Hughes was just elected and President Niederhauser was just elected as President of the Senate and everyone was emboldened about their opportunities at the hill. He had several people in the development community come to him and want to fix what they thought needed to be fixed. They wanted to ram it down the cities throats. This reminded him when credit unions and banks had their issues, and I was getting ready to stand back and watch the battle, the fireworks. Something very different happened. I was handed a bill that Senator Stephenson passed in the Senate and I was asked to pass it in the House. It was a great bill, nothing everybody wanted, but addressed concerns both parties wanted and it passed unanimously in the house. Everyone came together arm in arm, we also passed a transportation bill, that wasn't unanimous but we were able to raise and get a gas tax passed that benefitted everybody. This speaks to the process of people coming together. Sometimes the development community and the cities are at odds and this helps get them together. I was asked to participate in this LUTF Process. The first meeting there were fireworks, I had my bag of popcorn. By the final meeting, we were able to find some agreement, everyone is not happy with it, but it works and everyone can find something in it. We don't generally get everything we want, but it speaks to being collaborative, and to doing it in a way that we can go to the Capitol arm in arm working it out. Otherwise we have what we have in Washington, and we know how that turns out. Utah has been recognized by many national publications as being one of the best run states in the nation and this is why. Hopefully we can continue to still do that. I want to put a plug in for cities that are not up to date with ordinances, I encourage every city to go through their ordinances to make sure they are in concurrence with state code. As issues come up and they bring it to their representative it just feeds, and that is how they get brought up in a session, by not having codes up to date. Not a perfect process, issues can still come up. This prevents WWIII from coming up working through this process.

No questions presented

Ken Bullock gave point of information that Representative Schultz was just appointed as Chair of Transportation so we will be working with him in the future.

Cameron from the League made everyone aware that there are new committee assignments

Six Committees identified, information available on the slides. Ogden City happy Rep Peterson new Chair of House Gov't Operations. Revenue & Taxation 5 of the 12 plus the Chair are NEW. Those marked in Green are Freshman those in Blue are just new to that committee. House Rules 5 of the 8 are new, House Law Enforcement 7 of the 12 are new. House Political

Subdivision, we spend considerable amount of time working with this committee. The last 6 years has been diligently chaired by Rep. Curt Webb from Logan, has been a great ally, he is still on the committee but the new Chair is Rep. Pitcher. We look forward to working with him in the coming session in conjunction with Todd and Matt from South Weber. There are four brand new Freshman from South Jordan on this committee. This is an important Committee for us because 2/3 of the bills from this committee impact cities and towns, this is one of the bread and butter committees in the House the other is the Transportation Committee. There are nine new members on the House of Transportation Committee of those nine, four are Freshman. There will be a learning curve with new legislators or with existing legislators now in new places. We need a collective effort to inform them between now and January. The League army asks this, many of the cities will have breakfasts or city/council meetings, we are happy to attend and to provide resources. Wherever you are we will come anywhere and provide you with materials. Even if you don't think you have anything to say, you do. Local Officials Day will be January 25th, so at the very least you can invite your legislator to join you to this lunch, which is at noon at the Salt Palace.

Roger from the League discussed the referendum issue. (Loss of audio for first portion (1:08), but referred to the slides provided by the League). He showed definitions of initiative as proposed new statute/ordinance and referendum is a challenge to proposed statute/ordinance. This is the people's response to existing ordinance. Many, many times when we talk about direct democracy the conversation becomes about the policy. There is some intense emotion that comes from the communities, after something is studied for a long time and proposed, and then a community person comes in that sometimes doesn't understand or has not studied the issue and emotions can run high. I understand that. Discussion about the policy is irrelevant. It is part of the Constitution since 1908 for them to have the right to do this. No one is going to change the Constitution. The issue is not whether the policy should exist or not, it is over the management of the policy. I want to emphasize that, often times we don't get off of first base on that. For local governments it depends on how your city is structured sometimes it is legislative body and sometimes it is administrative body. Gave Article 1, Section 2 snippet from Utah Constitution to show that all political powers inherit in the people. No Debate on Direct Democracy Policy.

What is legislative action? The division at the State level is easy, the legislature is a body has its own rules, passes its own stuff. For local governments depends on how the city is structured. There are some areas that need to be clarified. For years we took some matters, budget, taxation, etc as administrative so don't need to subject them to referendum, but the court has said that distinction doesn't matter.

Second area, really defines what is legislative action...how do you get on the ballot(Mark Thomas in the room for clarification)? Their office more and more involved at local level in seeing what is needed to get on ballot. What are the requirements and shouldn't local be the same as State. State focus has been on initiatives, various rules and statutory changes making it difficult to get initiatives on the ballot. There has only been 1 referendum statute unchanged in 30 years that was the voucher issue. Question is not necessarily the number of signatures, it's roughly the same for State and local level, there is a stratified number, if you are small it's

30% of your citizens . For over 25,000 its 10% just like the State the difference between the two.... Why harder it's geography, as a result of a lawsuit. 26 of 27 Senate districts covered. Never been changed on the referendum level. Would it be good, it might? One of the challenges is most of our communities don't elect their leg body by districts, those that do have ready –made mechanism to choose that option. Is there a process for fixing that? The next issue is what are the Timelines? Referendum Policy on Truth in Taxation, due to Orem, what we found when we created the new process is that we did not try to amend. We created new one, because would be too difficult to amend for various reasons. We can debate what rules are but should be clearly understood by both the government side and community side. If budget can't be subject to referendum, and based to court cases it can.

The final category is the role of public officials. We come very close to limiting what you can say on a 1st Amendment Basis for public officials. We need to clarify that. Expenditures of public money. Clearly a need to deal with this. Rep Daw has a proposal, in gov't ops, which League opposed, which passed anyways. His sliver applied only to this area based on the need for this whole area needs to be examined this is illustrative of the fact the whole area needs to be looked at. We approached Lt. Governor's office we need to look at this with everyone, special districts, counties and State all need to be involved. Some of the deadlines applies to the county clerks. We also need to pull in grass roots activists that really care about the issue. The board has also approved moving forward to look at these issues.

Rep Valentine worked with us on the Truth in Taxation bill, we thought we had that done, but grass roots activists weighed in on a false premise, the last two days and it was derailed.

Mark Thomas Lt. Governor's office chief election officer: Commented on need for this. One issue they spent time on is ballot propositions, amendments and Rep Daw's sliver that Roger mentioned, public funds for political purpose. Not been an initiative or referendum on local level that has not had a complaint that their office has not had to deal with. It would be good to get that clarified. Time has come and they are happy to work on that with the League.

Roger commented that we have to come up with solution and work on this. Time for questions

Gary from Bountiful Q: Is the League position, to try to forestall legislation, until we have a position. Bountiful in the middle of this, collecting signatures, Provo is also in the middle of this. They have had conversation on the need for this recently. The playing field has changed-the gag order, they see on their inability to explain their position once signatures collected has to be addressed, understands needs , but with social media, they are hamstrung in their ability to get correct information done. Sometimes people look at referendums as the citizens against their government , but instead to put issue on ballot where government is not the enemy, but perception is government is the enemy when they are constrained.

Ken Answered, speaker understands how critical this is, that would be condition of League for working on this that legislation be forestalled while this is worked on.

Rob Wall Q: What does the bill really do? Direct impact, clarifies what is an administrative action not referable, what is legislative action is referable.