

**MINUTES OF THE UTAH LEAGUE OF CITIES & TOWNS
BOARD OF DIRECTORS MEETING
SHERATON HOTEL, 150 WEST 500 SOUTH, SALT LAKE CITY, UT 84101
THURSDAY, SEPTEMBER 12, 2019 @ 4:30PM**

EXECUTIVE BOARD

Mayor Jon Pike, President, St. George
Council Member Mike Mendenhall, 1st Vice President, Spanish Fork
Mayor Mike Caldwell, 2nd Vice President, Ogden City
Former Council Member Beth Holbrook, Past President, Bountiful

BOARD OF DIRECTORS

Gary Hill, Bountiful City Manager, Utah City Management Association
Council Member Jewel Allen, Grantsville
Mayor Andy Beerman, Park City
Council Member Don Christensen, West Valley
Mayor John Christensen, Mayfield Town
Council Member Brett Graham, Holladay
Mayor, Michelle Kaufusi, Provo
Council Member Erin Mendenhall, Salt Lake City
Mayor, Emily Niehaus, Moab
Mayor, Jeff Silvestrini, Millcreek
Mayor Jim Talbot, Farmington
Council Member, Dustin White, Roosevelt
Mayor, Maile Wilson Edwards, Cedar City
Mayor, Dawn Ramsey, South Jordan
Council Member Richard Barnett, Richfield
Council Member, Nicole Martin, Herriman

ULCT STAFF

Cameron Diehl, Executive Director
Abby Bolic, Operations and Membership Coordinator
Wayne Bradshaw, Director of Policy
Karson Eilers, Legislative Research Analyst
Nick Jarvis, Chief Operating Officer
Rachel Otto, Director of Government Relations
David Church, General Counsel
Meg Ryan, Land Use Academy of Utah
Roger Tew, Senior Policy Analyst
Susan Wood, Director of Communications and Training
John Hiskey, Senior Policy Advisor
Kerri Nakamura, Financial Oversight Consultant

EX-OFFICIO MEMBERS

Mayor, Len Arave, North Salt Lake
UMCA President, S. Annette Spendlove, North Ogden

VISITORS

Melinda Greenwood
Shawn Guzman
Adam Lenhard
Sarah Hodson, Get Healthy Utah
Shaleane Gee, Zions Bank
Council Member Damon Cann, North Logan
Mayor, Dawn Ramsey, South Jordan
Council Member Richard Barnett, Richfield
Council Member, Nicole Martin, Herriman
Paul Larsen, Brigham City

1. WELCOME & INTRODUCTIONS

Mayor Pike welcomed everyone and thanked the staff for a great conference and all they have done.

2. REVIEW & APPROVAL OF MINUTES

Board Member Mike Caldwell motioned to approve August 12, 2019 Meeting Minutes with the correction that Emily Niehaus was in attendance. Board Member Mayor Emily Niehaus seconded the motion.

Voting on the motion: All voting aye

Motion passed

3. CONFLICT OF INTEREST DISCLOSURE

There were none

4. ULCT BOARD & COMMISSION REPORTS & APPOINTMENTS

Abby Bolic stated that she had submitted the names of the appointments approved in the last board meeting and is just waiting to get a confirmation.

5. REVIEW & APPROVAL OF AUGUST CHECK REGISTER

Nick Jarvis presented the check register (see attached) and noted that the speaker for conference are the different items on the document.

Board Member Dustin White motioned to approve August Check Register. Board Member Mike Mendenhall seconded the motion.

Voting on the motion: All voting aye

Motion passed

6. LEGISLATIVE STRATEGY & PRIORITIES

Marijuana:

Director Diehl stated that Governor Herbert has called for a special session on Monday September 16, 2019 to fix problems with the Medical Cannabis Act. The Department of Agriculture and cannabis advocates are portraying cities as the obstacle. Diehl testified that the state did not follow their own process and offered to the committee that cannabis owners can use the ‘rip cord’ that already exists in LUDMA. The “rip cord” allows a property owner to request that the city make a land use decision or regulation with 45 day. Senator Vickers said publicly that his preference is not to preempt local government. During the last few days, the advocates have made several suggestion that are concerning to local government. As it stands, here are the options:

- 1) Support the offer of using the rip cord provision and clarifying that cannabis production and cultivation facilities are permitted uses

Pros: This option is consistent with our resolution and our principles. It would allow a city enough time to update a land use table and ensure compliance with other land use regulations just as the city would regulate any other business.

Cons: Cities are being scapegoated because of the state’s March 1 deadline and because the state did not follow their own process. The rip cord provision would ensure an expedited process but the Department of Agriculture, Libertas, and stakeholders want an even faster process. I believe they will continue to complain that cities are “dragging their feet” and will continue to pursue preemption.

Note: this concept appears in the special session bill.

- 2) General preemption of local land use authority over cannabis facilities

Pros: The main positive for us is that we will no longer be the political target of advocates who believe that we are the reason why facilities are not opening sooner.

Cons: This would violate our principles and our 2018 resolution and could create a precedent for other land uses where some legislators would like to preempt local government.

Note: this concept does not appear in the special session bill yet. There is precedent for state preemption of local government land use authority in certain circumstances, including homeless shelters and the siting of schools (traditional public and charter).

3) Limited preemption of local land use authority over cannabis facilities

Pros: This option pays lip service to local control. The concept is that the state would mandate the issuing of a temporary land use permit that would expire in two years and the licensee would sign away other property rights. The municipal regulations on the property would then apply.

Cons: This option raises many alarming questions. For example:

- It is still unclear what the standards would be for the temporary land use permit.
- Does other land use or other municipal regulations still apply? For example, can a city enforce other zoning rules, ingress/egress, inspect the property, verify compliance with other codes (i.e. electrical, plumbing, etc.), require tenant finishes, or review a site plan?
- Can an applicant waive his/her future property rights by agreeing that any rights end when the temporary permit expires?
- What happens if an applicant violates the temporary land use permit? Can the city pull a business license like they can with other businesses that violate code? What is the due process?
- Does this provision put a local government in a position to face litigation over a takings claim or be forced to eventually permit the temporary land use permittee as is?
- What is the fee schedule for a temporary land use permit?
- How can the city issue a permit within seven days that does not yet exist?

Note: this concept is in the special session bill.

The bill also has unclear language about municipal ordinances that apply to cannabis signage, eliminates most of the proximity requirements for cannabis pharmacies, reduces the proximity requirements for cannabis production/cultivation facilities, changes the waiver process, and allows for pharmacies and production/cultivation facilities to be adjacent to each other.

Next steps:

ULCT must determine our path forward this week in anticipation of the special session on September 16. The bill can be modified up until the vote on that day. I received the newest copy of the draft bill at 5 pm on September 10 and obtained permission from the bill sponsor to share it with key city leaders. I emailed it out to several of our best land use legal minds and am awaiting their feedback. The Governor and legislators are looking to us for our position.

Whether our political and legal position will be determinative in the final bill in light of the political pressure from the cannabis advocates is still unknown. On one hand, we have a policy resolution that spells out our key principles that we should fight to uphold, particularly since these land use principles could be applied to other land uses like housing or gravel pits. On the other hand, cities are being unfairly scapegoated by some advocates and a full preemption would end the scapegoating.

Board Member Damon Cann motioned to ratify Director Diehl's recommendation. Board Member Brett Graham seconded the motion.

Voting on the motion: All voting aye

Motion passed

Air Quality Resolution:

Rachel Otto stated that a Resolution on improving Utah's Air Quality was ratified by a split vote in the Legislative Policy Committee

Board Member Mike Caldwell motioned to have the state update the building code as outline in the current draft resolution. Board Member Nicole Martin seconded the motion.

Voting on the motion: All voting aye

Motion Passed

Gravel Pits:

Rachel Otto presented on issues with gravel pits

Jewel Allen stated that she has been following this for the last 2 year and agree that municipalities should have the ability to govern their own facilities.

7. **ASSET INVENTORY POLICY DISCUSSION**

Director Diehl introduced Shaleane Gee from Zion Bank and Joe Minicozzi

Minicozzi 's presentation was on value choice concerning Asset Inventory that municipalities might have and how they can maximize these assets by investing in their communities. Gee explained how to get the data and work with partners to get this done. She asked the question if those in the room are interested in this type of program. Mayor Caldwell stated that Ogden City struggled with their growth until Joe came in and articulated what they couldn't to get things moving in the right direction. Mayor Arave asked if this program includes air quality in the data they pull. Joe replied yes. Those in attendance were very interested in this program.

8. **AMICUS BRIEF UPDATE**

Based on recent input from UMAA membership, here is the updated ULCT amicus program proposal for you to consider. As a reminder, the ULCT Board of Directors adopted the original outline in January with the understanding that I would work with UMAA to further refine it. I hope to officially implement the refinements in September at the ULCT Board of Directors meeting as part of our Annual Convention.

I) ULCT Amicus Brief Subgroup (Selection Committee):

A) Membership

ULCT staff: 3, from the foursome of Cam, Dave, Rachel, and Roger

ULCT Board: 3 (note: the 2018-2019 volunteers are Millcreek Mayor Jeff Silvestrini, Cedar City Mayor Maile Wilson-Edwards, and Mayfield Mayor John Christensen).

UMAA: 3 members, either UMAA board members or their designees

B) Process of Application

A city or town must make the written request to the amicus subgroup. The city or town attorney shall submit the written request to either the ULCT Executive Director or to the ULCT General Counsel.

- Preference will be given to cases where the city is a party in the litigation.
- A city who is not a party in the litigation may still make a request on behalf of another public entity or private party.

In the written request, a city or town shall provide relevant information, including but not limited to timeline, existing briefs, and case history, and address the (IV) criteria.

C) Process of Review

A ULCT board member shall serve as chair of the amicus subgroup.

As time is of the essence in the selection process, the subgroup may meet, deliberate, and vote electronically to consider the amicus request.

The subgroup shall have at least 5 subgroup members vote to approve in order to accept the request.

The ULCT Executive Board and the Board of Directors shall be kept apprised of the subgroup's deliberations and recommendations. The Executive Board and the Board of Directors retain the authority to overrule the amicus subgroup's recommendations.

II) ULCT Amicus Brief Drafting Process

Option 1: A city or town requestor may provide a draft amicus brief for the ULCT subgroup, general counsel, or the subgroup's designee to consider, edit, sign onto, and/or submit.

Option 2: ULCT may charge a fee to the requesting city or town for the service of ULCT or a ULCT designee preparing the amicus brief.

Option 3: ULCT may contract with an attorney in municipal practice, a retired attorney with municipal expertise, or with an attorney in private practice with municipal expertise.

- UMAA and ULCT shall request volunteers from within the UMAA membership and as approved by the subgroup to be volunteer amicus drafters on behalf of UMAA and ULCT.
- The subgroup (selection committee) shall be aware of the identity of the drafter(s).
- ULCT shall first give preference to an attorney employed solely by a local government entity (or entities) and second to an attorney in private practice whose practice is exclusively on behalf of municipal government.

- The subgroup members or UMAA leadership may request that ULCT not utilize certain attorneys even if they have municipal expertise.
- The subgroup shall publicly acknowledge to their elected officials the service that the volunteer amicus drafters have rendered on behalf of ULCT and UMAA.

Regardless of who drafts the amicus brief, ULCT retains the quality control responsibility over the brief.

III) Eligibility:

A request must come from a city or town who is a member in good standing of ULCT.

The ULCT subgroup will give preference to state cases before the Utah Supreme Court. The subgroup may consider federal cases.

IV) Criteria for the subgroup to consider:

WHY ULCT SHOULD ENGAGE:

- 1) The case has general policy applicability to cities. ULCT cannot participate in every case, so the policy issue must be significant to a substantial number of cities.
- 2) The case has substantial revenue impact on cities.
- 3) What are the facts of the case?
- 4) ULCT has sufficient time and bandwidth to provide a brief.
- 5) The brief will add to what has already been submitted.
- 6) The ULCT position has a reasonable likelihood of success.
- 7) The brief is consistent with ULCT policies.
- 8) ULCT has a unique or symbolic perspective to add.

WHY ULCT SHOULD NOT ENGAGE:

- 1) There is insufficient time or bandwidth to engage.
- 2) The case has bad facts.
- 3) The position being requested is in conflict with existing ULCT policies.

- 4) The position being requested does not have consensus among ULCT members.
- 5) The legal issue can be more effectively resolved through legislation.
- 6) Pending litigation is likely to dispose of the position.

The subgroup may consider other legal, policy, and political factors in their deliberation. The subgroup may consider one, all, or a combination of the aforementioned criteria.

Board Member Gary Hill motioned to have the state update the building code as outline in the current draft resolution. Board Member Jewell Allen seconded the motion.

Voting on the motion: All voting aye

Motion Passed

9. GET HEALTHY UTAH: MUNICIPAL LEADER ILLUMINATION LABS

Sarah Hodson, Get Healthy Utah Executive Director stated that the mission of Get Healthy Utah is to create a culture of health through engaging multi-sector stakeholders, building partnerships, providing resources, and connecting efforts that support healthy eating and active living. Hodson stated that initiatives to improve community health are already underway in many cities. She spoke on the collective impact approach.

10. ULCT STRATEGIC PLANNING NEXT STEPS

Director Diehl stated that he is sending out a membership survey to get feedback on what they would like the ULCT to focus and work on. The board will be having a Strategic meeting on October 7, 2019. The time and place will be announced.

11. OTHER BUSINESS

None

12. CLOSED SESSION (IF NEEDED) AS PER UTAH CODE 52-4-205

None

13. ADJOURNMENT

Board Member Mike Caldwell motioned to adjourn the meeting. Board Member Damon Cann seconded the motion.

Voting on the motion: All voting aye

The motion passed

The meeting adjourned at 6:13 p.m.