

Utah League of Cities and Towns
Legislative Policy Committee Agenda – March 2, 2020, 12:00 p.m.
Utah State Capitol – Senate Building Room 210 (and Zoom webcast)

1. Welcome, introductions, logistics, and adoption of February 24, 2020 minutes
 - ULCT 1st Vice President Mayor Mike Caldwell welcomed the LPC into session and adopted the February 24 minutes.

2. Legislative items:
 - a. UPDATE: Land use legislation
 - i. H.B. 273 Property Rights Ombudsman Amendments
 - ULCT Executive Director Cameron Diehl updated the LPC on HB 273. ULCT staff and Officers met with the bill sponsor extensively over the previous week to outline concerns with the bill and get a better understanding of the sponsor’s motivation for running it. Cameron reviewed the four concerns the LPC identified in the February 24 meeting: 1) weaponizing the Property Rights Ombudsman, 2) potential chilling effect on cities acting in the scope of their duties, 3) compensatory or actual damages, and 4) the preservation of governmental immunity. He stated that the motion last week didn’t specifically address the potential chilling effect on cities because cities didn’t want to protect bad actors. Cameron then explained that the first substitute bill came out the previous Thursday afternoon. That substitute added the “knowingly and intentionally” standard, which was the result ULCT’s pushback on the bill sponsor and the committee. The substitute also removed the government immunity exemption and compensatory damages language. Instead the 1st substitute contemplated imposing a daily financial penalty if a local government knowingly and intentionally violated land use law. Cameron outlined several remaining concerns, including the scope of the daily penalties, exact role of the PRO in judicial review, the timing of the start of the penalty clock, the definition of who can earn the penalty, and the precedent the bill creates. The question was asked whether there was room for flexibility on the \$250 fine. Cameron said it was difficult in the negotiations to get to \$250, so that a change was unlikely. Salt Lake City Director of Government Relations Lynn Pace raised concerns about the amount of the fine, differentiating between land use applicants and neighbors. Several other LPC members asked whether a daily penalty could incentivize litigation. Layton City Attorney Gary Crane added that there is a precedent for penalties when local governments fail to adhere to laws, including the Open and Public Meetings Act and the Government Records and Management

Act. Several LPC members expressed concerns that \$250 per day is too great a penalty for small cities and the bill takes a one-size fits-all approach to deterring bad actors. St. George City Attorney Shawn Guzman stated that the \$250 in the legislation was \$1,000 a week ago and hard negotiations were undertaken through the weekend. Cameron added that there was a lot of due process built into the bill before a judge would consider imposing penalties. Farmington City Manager Shane Pace asked if there was any flexibility on determining what the penalty money could be used for. Cameron stated that the idea of using the money for training in the ombudsman's office was rejected by the bill sponsor. Shane also asked if it was possible to add a cap on the daily penalty timeline. Cameron responded that the timeline was still unclear in the 1st substitute Bountiful City Manager Gary Hill asked what the consequences would be if 3rd parties could pursue penalties as well. Gary Crane responded that aggrieved 3rd parties can appeal decisions through the PRO process, but the land use interpretation impacts the applicant more than anyone else. He cautioned against opening penalties to anyone aggrieved because city councils could be adversely impacted by members of the public pursuing referenda. Mayor Caldwell suggested that this version of the bill is a scalpel where the original bill was a sledgehammer. Gary Hill explained when he made the motion last week, he specifically identified the lines he felt ULCT couldn't cross. The 1st Sub no longer violated those standards, so he motioned ULCT change the bill's position to neutral so long as the legislation continues to not violate those conditions and encourage staff to try to change the penalty amount to *up to \$250* per day. ULCT Immediate Past President Mayor Jon Pike seconded the motion and cautioned that this is a leadership bill and cities don't want to be in the position of defending bad actors. Cameron reminded the LPC that the threshold for consensus is 60% of the voting members. The LPC adopted the motion to change position to neutral on HB 273 with a vote of 71-20.

- ii. H.B. 374 Local Government Building Regulation
 - ULCT Director of Government Relations Victoria Ashby updated the LPC on HB 374. The bill was amended with ULCT's compromise language this week. The substitute bill adds a reduction in non-structural residential building design elements for housing that addresses 80% of AMI in exchange for increased density to the list of moderate-income housing policy items from last year's SB 34.
- iii. H.B. 393 Municipal Annexation Amendments

- Victoria explained that this bill does two things. First, it states that municipalities may not petition to annex an area if the proposed area is already identified in a pending request for an incorporation feasibility study. Second, it states that a municipality may not annex an island or peninsula without a petition, when permitted, unless the county agrees to the annexation. Victoria said staff recommends opposing the bill as written and working with the sponsor to amend the bill. She added that the sponsor is open to discussion.

b. UPDATE: Other legislation

i. S.B. 210 Body Camera Amendments

- ULCT Senior Policy Advisor John Hiskey introduced Orem Police Chief Gary Giles, President of The Utah Chiefs of Police Association. Chief Giles said that the original bill language was terrible for law enforcement. He explained that the bill modifies the list of circumstances when an officer may deactivate a body-worn camera. The bill also stipulates when an officer deactivates or fails to activate a body camera, they must document the reason for doing so. Finally, the bill allows a presiding judge to provide an adverse inference instruction to a jury of a criminal trial if an officer fails to comply with requirements related to body-worn cameras in specific circumstances. In order to do so, the defendant must prove the officer intentionally or with reckless disregard of the requirements of code turned off the camera and that turning off the camera would have changed the outcome of the trial. The court can also consider whether the officer displays a pattern of non-compliance. John Hiskey told the LPC staff recommends a position of support on SB 210 to be consistent with ULELC.

3. Other legislative issues and questions from membership

i. H.B. 298 Victim Guidelines for Prosecutors

- Victoria explained that the original bill would have required law enforcement agencies to certify all I-918 petition for U Nonimmigrant Status forms, regardless of whether law enforcement agencies have been able to verify the information. She credited St. George City Attorney Shawn Guzman for working with the bill sponsor and stakeholders to address ULCT's concerns in the bill. The 1st substitute clarifies that that law enforcement agencies shall certify victim helpfulness if the certifying agency determines the victim was a victim of a qualifying criminal activity and has been, is being, or is likely to be help helpful in an investigation of a qualifying criminal activity. The bill also requires CCJJ to work with stakeholders to develop guidelines relating to victim helpfulness and requires agencies to

process forms within 90 days of request. Chief Giles said LELC took a position to hold the bill because they hadn't seen the substitute changes. Shawn emphasized that the certifying agency has discretion in determining helpfulness and the bill codifies the federal process. Shawn added that ULCT would be working with CCJJ, ACLU, and other stakeholders to develop the guidelines over the interim. Finally, he added the bill clarifies that the I-918 is a protected record in GRAMA. Chief Giles indicated that LELC will reconsider their position to support when those changes are made public. Shawn recommended ULCT take a position of support on the bill.

ii. H.B. 271 Firearm Preemption

- Cameron Diehl updated the LPC on HB 217. The bill raises concerns about double preemption (a trap for the unwary) and existing exceptions, homeless shelters, government immunity, and damages. The bill was amended on the floor to exclude homeless shelters and repealed part of the government immunity waiver. This bill still has some problematic language, so Cameron said staff recommends ULCT continue to oppose the bill. He also raised the concern about city-owned event centers where a performer might request firearm restrictions during their event.

iii. H.B. 411 Assault Against Health Providers Amendments

- Cameron explained HB 411. HB 411 modifies the crime of assaulting an emergency medical service worker, a health care provider, or a mental health worker.

iv. H.B. 394 Homeless and Transitional Housing Program Amendments

- Cameron Briefed the LPC on HB 394. This bill tries to address some of the issues that Dr. Robert Marbut outlined when he visited Utah to discuss homeless service issues. But the bill is also concerning because it creates a new chain of command and removes the authority of the five mayors on the State Homeless Coordinating Committee. Cameron said ULCT staff recommends opposing the bill until the issue with the role of the local elected officials is addressed.

v. S.B. 214 Gambling Machine and Sweepstakes Amendments

- John Hiskey and Nathan Bracken spoke to the LPC on SB 214. Nathan stated that fringe gambling machines are a problem across the country. In Utah, they're unregulated and untaxed so there's no ability to mitigate the harmful impacts the machines have on communities. The intent of the bill is to close loopholes that machine owners use to avoid restrictions. The bill modifies the crime of gambling, increases the

criminal penalties for an individual convicted of a gambling offense, prohibits placing a fringe gaming machine, authorizes a municipality or county to seize gambling debts, proceeds, or gaming devices in certain circumstances, and provides for a cause of action for a person who suffers economic loss as a result of a fringe gaming device, video gaming device, or gambling device or record. Cameron stated that ULCT staff recommends supporting the bill and warned that it may have some organized opponents.

vi. HB 305 Impact Fee Amendments

- South Jordan City Attorney Ryan Loose updated the LPC on HB 305. The latest substitute will apply the same notice requirements for county land development in counties of the 1st class as counties in the 2nd – 6th class. The bill doesn't restrict development in unincorporated Salt Lake County but does require notice. South Jordan Mayor Dawn Ramsey moved to support the bill to bring counties of the 1st class into harmony with other counties. The LPC voted in favor of the motion.

4. Ratify staff recommendations

- The LPC voted to ratify staff recommendations.

5. Adjourn

- The LPC adjourned.