

The Anatomy of an Ordinance AND THE REPERCUSSIONS OF ORGANIC CODE

HISTORY of ORDINANCE DEVELOPMENT

1868 Dillon's Rule

1980 Home Rule

The Anatomy of an Ordinance & THE REPERCUSSIONS OF ORGANIC CODE

COMMON REFERENCE & RESEARCH MATERIAL

Utah Code"Am Jur""CJS"Utah CodeAmericanCorpus JurisAnnotatedJurisprudenceSecundum

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Constitutional Challenging Ordinances: 3 Levels of Judicial Review

If the constitutionality of an ordinance is challenged in court, the judicial system typically applies one of the three levels of review called "scrutiny." Scrutiny determines how a court analyzes the ordinance and which party has the burden of proof.

This is the basic framework of scrutiny challenged laws:

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Strict Scrutiny (The Ugly or the Good—Depending on the Party)

This is the highest level of scrutiny applied by courts to an ordinance. Based upon the Equal Protection Clause in the U.S. Constitution, the U.S. Supreme Court holds that laws which discriminate against certain classes of people (such as: race, national origin, and similar) must pass this highest level of scrutiny to survive a challenge. This high level of scrutiny is also applied whenever a "fundamental right" is being threatened by a law, like the right to marriage or free speech. In municipal government, this level of review is commonly used to challenge the "Sign Ordinance" as in Reed v. Town of Gilbert, 576 U.S. _____ (2015).

Strict scrutiny requires the city to prove that:

1. There is a compelling state interest behind ordinance.

2. The ordinance is narrowly tailored to achieve its result.

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Intermediate Scrutiny (The Bad)

The mid-level of judicial focus on a challenged ordinance is less demanding than strict scrutiny. To pass intermediate scrutiny, an ordinance must:

 Serve an important government objective.
 Be substantially related to achieving the objective.

This test was first used in Craig v. Boren, 429 U.S. 190 (1976) and is used whenever a law discriminates based on gender or sex. As with strict scrutiny, intermediate scrutiny places the burden of proof on the government.

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Rational Basis Review (The Good or the Bad—Depending on the Party)

This is the **lowest level of scrutiny** applied to challenging an Ordinance, and requires very little of the municipality to pass as constitutional muster. Under rational basis, the burden is on the person challenging the law (not the government) to prove either:

1. The government has no legitimate interest in

the law or policy; or

2. There is no reasonable, rational link between that interest and the challenged law.

The court is highly deferential to the city. Courts most often deem the ordinance as valid law to and rational. Rational basis typically applies to land use decisions where there is an argument that a governmental action is arbitrary, capricious, or unreasonable.

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UTAH CODE 10-3-701 Legislative power exercised by ordinance

Except as otherwise specifically provided, the governing body of each municipality shall exercise its legislative powers through ordinances.

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UTAH CODE 10-3-717 Purpose of resolutions

Unless otherwise required by law, the governing body may:

(1) exercise all administrative powers by resolution including:

- (a) establishing water and sewer rates;
- (b) establishing charges for garbage collection and fees charged for municipal services;
- (c) establishing personnel policies and guidelines; and
- (d) regulating the use and operation of municipal property;

and

(2) not impose a punishment, fine, or forfeiture by resolution.

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UTAH CODE 10-3-702 Extent of power exercised by ordinance

The governing body may pass any ordinance to regulate, require, prohibit, govern, control or supervise any activity, business, conduct or condition authorized by this act or any other provision of law. An officer of the municipality may not be convicted of a criminal offense where he relied on or enforced an ordinance he reasonably believed to be a valid ordinance. It shall be a defense to any action for punitive damages that the official acted in good faith in enforcing an ordinance or that he enforced an ordinance on advice of legal counsel.

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UTAH CODE 10-3-703 Criminal penalties for violation of ordinance—Civil penalties prohibited—Exceptions

(1) The governing body of each municipality may impose a criminal penalty for the violation of any municipal ordinance by a fine not to exceed the maximum class B misdemeanor fine under Section 76-3-301 or by a term of imprisonment up to six months, or by both the fine and term of imprisonment.
(2)

- (a) Except as provided in Subsection (2)(b), the governing body may prescribe a civil penalty for the violation of any municipal ordinance by a fine not to exceed the maximum class B misdemeanor fine under Section 76-3-301.
- (b) A municipality may not impose a civil penalty and adjudication for the violation of a municipal moving traffic ordinance.

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UTAH CODE 76-3-301 Fines of Persons.

(1) A person convicted of an offense may be sentenced to pay a fine, not exceeding:

(a) \$10,000 for a felony conviction of the first degree or second degree;

- (b) \$5,000 for a felony conviction of the third degree;
- (c) \$2,500 for a class A misdemeanor conviction;
- (d) \$1,000 for a class B misdemeanor conviction;
- (e) \$750 for a class C misdemeanor conviction or infraction conviction; and
- (f) any greater amounts specifically authorized by statute.

(2) This section does not apply to a corporation, association, partnership, government, or governmental instrumentality.

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UTAH CODE 10-3-703.7 Administrative proceedings

(1) A municipality may adopt an ordinance establishing an administrative proceeding to review and decide a violation of a civil municipal ordinance.

 (2) An ordinance adopted in accordance with Subsection (1) shall provide due process for parties participating in the administrative proceeding.

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10-3-704 Form of ordinance

Any ordinance passed by the governing body, after the effective date of this act, shall contain and be in substantially the following order and form:

(1) a number;

(2) a title which indicates the nature of the subject matter of the ordinance;

(3) a preamble which states the need or reason for the ordinance;

(4) an ordaining clause which states "Be it ordained by the (name of the governing body and municipality):";

(5) the body or subject of the ordinance;

(6) when applicable, a statement indicating the penalty for violation of the ordinance or a reference that the punishment is covered by an ordinance which prescribes the fines and terms of imprisonment for the violation of a municipal ordinance; or, the penalty may establish a classification of penalties and refer

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to such ordinance in which the penalty for such violation is established;

(7) a statement indicating the effective date of the ordinance or the date when the ordinance shall become effective after publication or posting as required by this chapter;

(8) a line for the signature of the mayor or acting mayor to sign the ordinance;

(9) a place for the municipal recorder to attest the ordinance and fix the seal of the municipality; and

(10) in municipalities where the mayor may disapprove an ordinance passed by the legislative body, the ordinance shall show, that it was passed with the mayor's approval or that if the mayor disapproved the ordinance, that it was passed over his disapproval. If the mayor neither approves, or disapproves an ordinance, the ordinance shall show that it became effective without the approval or disapproval of the mayor.

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10-3-718 Form of resolution

Any resolution passed by the governing body of each municipality shall be in a form and contain sections substantially similar to that prescribed for ordinances.

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10-3-719 Resolutions need no publication— Effective date

Resolutions may become effective without publication or posting and may take effect on passage or at a later date as the governing body may determine, but resolutions may not become effective more than three months from the date of passage.

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UTAH CODE 10-3-705 Requirements as to form—Effective date.

Ordinances passed or enacted by the governing body shall be signed by the mayor, or if he is absent, by the mayor pro tempore, or by a quorum of the governing body, and shall be recorded before taking effect. No ordinance shall be void or unlawful by reason of its failure to conform to the provisions of Subsection 10-3-704(1), (2), (3) or (4). Ordinances which do not have an effective date shall become effective 20 days after publication or posting, or 30 days after final passage by the governing body, whichever is sooner.

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UTAH CODE 10-3-706 Revision of Ordinances

The governing body by resolution may authorize and direct the mayor to appoint, with the advice and consent of the governing body, one or more persons to prepare and submit to the governing body a compilation, revision or codification of municipal ordinances. The compensation for the service shall be fixed by resolution of the governing body and paid out of the municipal treasury.

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UTAH CODE 10-3-707 Power to codify ordinances

Any municipality is hereby empowered to revise, codify and compile from time to time and to publish in book, pamphlet or looseleaf form all ordinances of the municipality of a general and permanent character and to make such changes, alterations, modifications, additions, and substitutions therein as it may deem best to the end that a complete simplified code of the ordinances then enforced shall be presented, but with errors, inconsistencies, repetitions, and ambiguities therein eliminated.

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UTAH CODE 10-3-708 Arrangement of ordinances

The ordinances in the revision, codification and compilation shall be arranged in such order as the governing body may decide and may exclude the titles, enacting clauses, signatures of a mayor or mayor pro tempore of the governing board, attestations, and other formal parts, except the attestation of the recorder.

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UTAH CODE 10-3-709 Repeal of conflicting provisions—Title

Such revision shall be by one ordinance embracing all ordinances of a general and permanent character preserved as changed or added to and perfected by the revision, codification and compilation and shall be a repeal of all ordinances in conflict with the revision, codification and compilation, but all ordinances then enforced shall continue in force after the revision, codification and compilation for the purpose of all rights acquired, fines, penalties and forfeitures and liabilities incurred and actions therefor. The only title necessary for such ordinance shall be "an ordinance revising, codifying and compiling the general ordinances of the city or town of _____ (inserting the name of the municipality)."

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UTAH CODE 10-3-710 Publication in book, pamphlet or looseleaf form—State statutes.

Ordinances revised, codified, compiled and published in book, pamphlet or looseleaf form by authority of the governing body need not be printed or published in any other manner, except that the ordinance adopting the revision, codification or compilation shall be published or posted in the manner provided by law. Provisions of state law may be adopted by reference. Any changes necessary to conform those state laws with municipal ordinance shall be noted.

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UTAH CODE 10-3-711 Publication and posting of ordinances

(1) Before an ordinance may take effect, the legislative body of each municipality adopting an ordinance, except an ordinance enacted under Section 10-3-706, 10-3-707, 10-3-708, 10-3-709, or 10-3-710, shall:

(a) deposit a copy of the ordinance in the office of the municipal recorder; and

(b)

(i) publish a short summary of the ordinance at least once:
 (A) in a newspaper published within the municipality; or
 (B) if there is no newspaper published within the municipality, in a newspaper of general circulation within the municipality; or

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(ii) post a complete copy of the ordinance:

(A) for a city of the first class, in nine public places within the city; or

(B) for any other municipality, in three public places within the municipality.

(2)

(a) Any ordinance, code, or book, other than the state code, relating to building or safety standards, municipal functions, administration, control, or regulations, may be adopted and shall take effect without further publication or posting, if reference is made to the code or book and at least one copy has been filed for use and examination by the public in the office of the recorder or clerk of the city or town prior to the adoption of the ordinance by the governing body.

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(b) Any state law relating to building or safety standards, municipal functions, administration, control, or regulations, may be adopted and shall take effect without further publication or posting if reference is made to the state code.

(c) The ordinance adopting the code or book shall be published in the manner provided in this section.

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UTAH CODE 10-3-712 Effective Date

Ordinances shall become effective 20 days after publication or posting or 30 days after final passage by the governing body, whichever is closer to the date of final passage, but ordinances may become effective at an earlier or later date after publication or posting if so provided in the ordinance.

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UTAH CODE 10-3-713 Recording, numbering and certification of passage

The municipal recorder shall record, in a book used exclusively for that purpose, all ordinances passed by the governing body. The recorder shall give each ordinance a number, if the governing body has not already so done. Immediately following each ordinance, or codification of ordinances, the recorder shall make or cause to be made a certificate stating the date of passage and of the date of publication or posting, as required. The record and memorandum, or a certified copy thereof, shall be prima facie evidence of the contents, passage, and publication or posting of the ordinance or codification.

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UTAH CODE 10-3-714 Contents, dates, publication proved under seal.

The contents of all municipal ordinances, the dates of passage, and the date of publication or posting may be proved by the certification of the municipal recorder under the seal of the municipality.

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UTAH CODE 10-3-715 Municipal ordinances received in evidence

Whenever municipal ordinances are printed in book, pamphlet or looseleaf form and purport to be published by the authority of the governing body, the book, pamphlet or looseleaf shall be prima facie evidence of the contents, passage, and legal publication of such ordinances, as of the dates mentioned in the book, pamphlet, or looseleaf in all courts and administrative proceedings.

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PART 1: THE ANATOMY OF AN ORDINANCE (According to the Utah State Code)

PART 2: FREE SAMPLES! THE GOOD/BAD/UGLY

PART 3: TIPS FOR TRANSPLANTING ORDINANCES INTO AN ORGANIC CODE

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PART 2: FREE SAMPLES! THE GOOD/BAD/UGLY

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GOOD CITY, UTAH ORDINANCE 2017-12

ORDINANCE OR RESOLUTION ORD. NAME

1/2" INDENT

SHORT TITLE ALL CAPS

THIS IS AN ORDINANCE LONG TITLE—ALL CAPS. DUIS AC FELIS URNA. VESTIB-ULUM EU ERAT PORTTITOR LEO MOLESTIE LAOREET. SED IN CONGUE ARCU, UT FACILISIS NUNC. MAECENAS EGET SCELERISQUE FELIS.

WHEREAS, lorem ipsum dolor sit amet, consectetur adipiscing elit. Duis ac felis urna. Vestibulum eu erat porttitor leo molestie laoreet. Nulla aliquet mauris et venenatis feugiat. Donec a vestibulum lectus. Vestibulum placerat in metus vitae efficituv. Aliquam tincidunt pulvinar neque vel venenatis. Vestibulum rutrum porta sem;

WHEREAS, duis placerat, tellus sed lacinia rutrum, ante magna hendrerit lorem, eu malesuada sapien erat vel dui. Sed in congue arcu, ut facilisis nunc. Maecenas eget scelerisque felis, non eleifend nibh. Integer eros sem, iaculis;

WHEREAS, etiam id nunc eget leo iaculis rhoncus quis id metus. Donec libero neque. Duis placerat, tellus sed lacinia rutrum, ante magna hendrerit lorem;

NOW THEREFORE, be it ordained by the Council of Good City, in the State of Utah, as follows:

SECTION 1: <u>ADOPTION.</u> "12.32.300 Bees Encouraged" of the Good Municipal Code (GMC) is hereby *adopted* as follows:

BEFORE ADOPTION

GMC 12.32.300 (Non-existent)

AFTER ADOPTION

<u>GMC 12.32.300 Bees Encouraged</u> To improve pollination and food security of the community, the management of bees are encouraged.

SECTION 2: <u>AMENDMENT</u>. "12.32.370 Chickens" of the Good Municipal Code

(GMC) is hereby *amended* as follows:

BEFORE AMENDMENT

GMC 12.32.370 Chickens

Chickens and hatcheries are not permitted within the city limits. Children must allow fast-food restaurants to dictate to them where chicken nuggets may or may not come from, and children must learn work ethics on computers and smartphones—not with dangerous farm animals.

AFTER AMENDMENT GMC 12.32.370 Chickens Chickens and hatcheries are permitted within the city limits. RECITALS

ORDAINING CLAUSE

LONG TITLE **SECTION 3:** <u>**REPEAL.**</u> "12.32.379 Residential Gardens" of the Good Municipal Code (GMC) is hereby *repealed* as follows:

BEFORE REPEAL

GMC 12.32.379 Residential Gardens

Gardens on residential properties are not allowed within the city limits.

AFTER REPEAL

GMC 12.32.379 Residential Gardens (Repealed)

SECTION 4: <u>**RENUMBER.**</u> "12.32.380 Cats And Dogs" of the Good Municipal Code (GMC) is hereby *renumbered* as follows:

BEFORE RENUMBER

GMC 12.32.380 Cats And Dogs

AFTER RENUMBER GMC 12.32.385 Cats And Dogs (Renumbered)

SECTION 5: <u>**REPEAL & RE-ENACTMENT.**</u> "15.02.170 Horses" of the Good Municipal Code (GMC) is hereby *repealed & reenacted* as follows:

BEFORE REPEAL & RE-ENACTMENT

GMC 15.02.170 Horses Horses are not allowed within residential areas

AFTER REPEAL & RE-ENACTMENT

GMC 15.02.170 Horses

Horse trails no wider than five (5) feet are encouraged beside all public roadways within the old town residential (OTR) district.

SECTION 5: <u>CORRECTION</u>. "15.12.112 Disposing Of Animals In Residential Areas" of the Good Municipal Code (GMC) is hereby *corrected* as follows:

BEFORE CORRECTION

GMC 15.12.112 Disposing Of Animals In Residential Areas Individuals may kill cows without a hunting license or permit when they are found committing, or about to commit, depredations on agricultural crops, or when concentrated in such numbers and manner as to constitute a health hazard or other nuisance.

AFTER CORRECTION

GMC 15.12.112 Disposing Of Animals In Residential Areas

Individuals may kill crows without a hunting license or permit when they are found committing, or about to commit, depredations on agricultural crops, or when concentrated in such numbers and manner as to constitute a health hazard or other nuisance.

REDLINE SHOWN, MAY DEPEND ON COUNCIL PREFER-ENCE **Severability Clause**: Should any part or provision of this [ORDINANCE/RESOLUTION] be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the [ORDINANCE/RESOLUTION] as a whole or any part thereof other than the part so declared to be unconstitutional or invalid.

Effective Date: This [ORDINANCE/RESOLUTION] shall be in full force and effect from [INSERT DATE] and after the required approval and publication according to law.

NOT ALWAYS APPLICABLE

Repealer Clause: All Good City ordinances or resolutions or parts thereof, which are in conflict herewith, are hereby repealed.

PASSED AND ADOPTED BY THE GOOD CITY [GOVERNING BODY] [MONTH, DAY, YEAR].

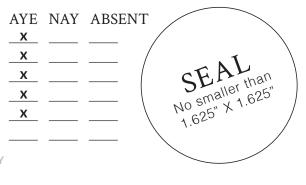
[AUTHORITY NAME, AUTHORITY TITLE, Good City, Utah

[GOVERNING BODY] Vote as Recorded:
[GOVERNING BODY] Member [NAME]
[GOVERNING BODY] Mayor/President [NAME]

OF GOVERNING BODY MEMBERS IN MUNICIPALITIES WILL VARY

Attest:

[AUTHORITY NAME, AUTHORITY TITLE, Good City, Utah



RECORDED this ____ day of _____, 2017. PUBLISHED OR POSTED this ____ day of _____, 2017.

CERTIFICATE OF PASSAGE AND PUBLICATION OR POSTING

In accordance with Utah Code Annotated \$10-3-713, 1953 as amended, I, the [AUTHORITY TITLE] of Good, Utah, hereby certifies that the foregoing Ordinance was duly passed and published or posted at:

1) Front doors of Good City Hall at 23 North Center Street

2) Front doors of Good County Library at 34 W Center Street

3) the base of the Good City Electronic Sign at 100 North Center Street

on the above referenced dates.

[AUTHORITY NAME, AUTHORITY TITLE, Good City, Utah

POST A COMPLETE COPY OF THE ORDINANCE:

(A) FOR A CITY OF THE FIRST CLASS, IN NINE PUBLIC PLACES WITHIN THE CITY; OR

(B) FOR ANY OTHER MUNICIPALITY, IN THREE PUBLIC PLACES WITHIN THE MUNICIPALITY.

BAD CITY, UTAH ORDINANCE 12.30

SECTION 1: 12.32.300 Bees Banned The management of bees is banned in all residential areas.

Severability Clause: Should any part or provision of this [ORDINANCE/RESOLUTION] be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the [ORDINANCE/RESOLUTION] as a whole or any part thereof other than the part so declared to be unconstitutional or invalid.

Repealer Clause: All Good City ordinances or resolutions or parts thereof, which are in conflict herewith, are hereby repealed.

PASSED AND ADOPTED BY THE BAD CITY [GOVERNING BODY] [MONTH, DAY, YEAR].

hum

AUTHORITY NAME, AUTHORITY TITLE, Good City, Utah

Attest:

[AUTHORITY NAME, AUTHORITY TITLE, Good City, Utah

	AYE NAY ABSENT
[GOVERNING BODY] Vote as Recorded:	X
[GOVERNING BODY] Member [NAME]	<u>X</u>
[GOVERNING BODY] Member [NAME]	X
[GOVERNING BODY] Member [NAME]	<u>X</u>
[GOVERNING BODY] Member [NAME]	
[GOVERNING BODY] Mayor/President [NAME]	

RECORDED this ____ day of _____, 2017. PUBLISHED OR POSTED this ____ day of _____, 2017.

CERTIFICATE OF PASSAGE AND PUBLICATION OR POSTING

In accordance with Utah Code Annotated §10-3-713, 1953 as amended, I, the [AUTHORITY TITLE] of Bad, Utah, hereby certifies that the foregoing Ordinance was duly passed and published or posted at:

1) City Hall

2) County Library

3) Electronic Sign

Title 12, Bees Banned To decrease pollination and food security of the community, the management of bees is banned.

ECORDED this ____ day of _____, 2017. PUBLISHED OR POSTED this ____ day of _____, 2017.

CERTIFICATE OF PASSAGE AND PUBLICATION OR POSTING In accordance with Utah Code Annotated §10-3-713, 1953 as amended, I, the [AUTHORITY TITLE] of Ugly, Utah, hereby certifies that the foregoing Ordinance was duly passed and published or posted at City Hall.

PART 3: TIPS FOR TRANSPLANTING ORDINANCES INTO AN ORGANIC CODE



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What to consider when drafting legislation

http://goo.gl/eLWMzg

or more broadly,

http://mco.municipalcodeonline.com

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