SB174 Summary &
Frequently asked Questions Fact Sheet on Subdivisions

June 2023

SB 174 Local Land Use and Development Revisions (Fillmore)

SB 174 changes three areas of the Land Use, Development, and Management Act:

1. It creates a new process that all municipalities and counties must follow for subdividing residential lots.
2. It modifies the Internal Accessory Dwelling Unit (IADU) provisions enacted in HB 82 (2021).
3. Lastly, the bill creates a penalty for cities and counties who fail to comply with MIHP reporting requirements beginning with the 2024 reporting cycle. Note: HB 364 modified the MIHP reporting timeline.

The focus of this document is on the Subdivision piece. See ULCT.org for a complete bill summary.

Action Necessary: SB 174 requires local governments to update their subdivision ordinances. Deadlines vary based on municipal population. They are specified in the details section below. ULCT secured additional technical assistance resources from the state for ordinance updates. We expect the funding program to be created this summer. Some municipalities may need to update their Internal IADU ordinances as well. The IADU provisions take effect on May 3, 2023.

Detailed Summary Subdivisions

Two-step Administrative Subdivision Process

- SB 174 requires local governments to each designate an Administrative Land Use Authority (ALUA) to review subdivision applications. These authorities may not be members of a town/city council.
- SB 174 establishes a two-step process for approving subdivisions. You may also do a combined process for application review**. Municipalities who are required to comply with MIHP reporting** (all cities with populations > 10,000 and cities with populations >

5,000 located in a county of the 1st, 2nd, or 3rd class) must revise their subdivisions ordinances to comply with this process by **Feb. 1, 2024.**

- **All other municipalities** must revise their subdivision ordinances to comply with this process by **Dec. 31, 2024.**
    - Step 1) **preliminary subdivision application review** - the administrative land use authority (municipal staff or planning commissioners) must review the subdivision application within **15 business days** of receiving a **complete application**. The complete application should be the basis of the checklist that you must develop and post for both preliminary and final review application revew. The administrative land use authority may receive public comment and conduct one public hearing. If the application complies with applicable local regulations, it shall be approved and proceed to the second step.
    - Step 2) **final subdivision application review** - municipalities must complete a review of applications at this stage within **20 business days**. Municipalities may **perform up to four review cycles** on a given application. A review cycle is not considered complete until the applicant has adequately addressed all of the redlines identified by the municipality. Municipalities may only add new redlines after the first review cycle in response to changes made by the applicant or if a correction is necessary to protect public health or safety, or to enforce state or federal law.
    - If the application falls into a codified geological hazard area in your community (e.g. adopted and designated areas in your code) those applications are exempt from the review cycle.
- SB 174 creates two distinct appeal processes after the four review cycles have been exhausted and 20 days have passed.
    - For disputes relating to public improvement or engineering standards, the municipality shall assemble a three-person panel meeting within 10 days of receiving a request from the applicant.
    - For all other disputes, the municipality shall refer the question to the designated appeal authority at the applicant's request.
- The panel of experts includes:
    - One licensed engineer designated by the municipality.
    - One licensed engineer designated by the land use applicant.
    - One licensed engineer, agreed upon, and designated by the two designated engineers.

  Members appointed to the panel may not have an interest in the application in question. The applicant must pay 50% of the total cost of the panel and the municipality's published appeal fee. The municipality pays the other 50%. The panel's decision is final, unless the municipality or applicant petition for district court review within 30 days after the final written decision is issued.

Frequently asked Questions & Answers by Todd Godfrey Esq. & League Staff

Question: Can local communities still retain an informal concept plan step?

Answer: If it is requested or agreed to by the applicant you can but you can't require it.

Question: A Planned Unit Development (PUD) is typically processed with a subdivision. As such, can a PUD still allow a concept plan?

Answer: A concept plan for the PUD portions of a land use approval, yes. It will be important now to distinguish and separate your processes. Iti is recommend the legislative process run its course first.

Question: If the City Council cannot approve a final plat what happens in small towns where the City Council is the only staff for reviewing applications?

Answer: We need to train and educate a Planning Commissioner to fill that role or you can subcontract to an engineer and include it in your fee resolution as part of the application fee.

Question: Should we assume that a "1-family dwelling" is a single-family detached dwelling, a "2-family dwelling" is a duplex, and a "townhouse" is an attached single-family dwelling (or zero-lot-line single-family dwelling)?

Answer: Yes. That is how Todd is advising his clients.

Question: How does a City Council accept a right of way street dedication if they don't approve the final plat?

Answer: There is no legal requirement for the City or Town Council to accept a right of way dedication in the law. A City's acceptance of dedicated streets is demonstrated on a recorded plat, bearing the approval of the City or Town by the Mayor.

Question: Is it four review cycles for both preliminary and final (total of 8) or four total?

Answer: Four total. We read that as in between the preliminary and the final plat.

Question: What happens after 4 cycles are complete? Does the city then issue a formal approval or denial?

Answer: The City should issue an approval or denial. If they do not timely decide, then the applicant can call for the appeal panel to be convened as called for in the new legislation.

Question: If the same subdivision includes several housing types, how does that change the review process? For example, a mixed-use project that includes single-family, townhouse, apartment, retail, commercial.

Answer: If an applicant insists on a subdivision that mixes uses in a single plat, then it is my opinion the provisions of section 10-9a-604.1 do not restrict the process for review.

Question: In our City there is a 3 step process preliminary, Design and engineering and then final plat. Design and engineering is reviewed by a development review committee meeting (utility providers ect.) Can we still have that middle phase?

Answer: I would recommend you not identify the design and engineering as a separate approval process, and merge that with your preliminary or final review phase.

Question: Can a small city hire a consultant or engineering firm to review and comment on the subdivision and bill the developer for the reviews.

Answer: If your fee schedule supports that and if the charges are reasonable, yes.

Question: Will the administrative land use authority be subject to OPMA requirements? Or can we just have them review the plat and sign if it is done?

Answer: The administrative land use authority is subject to OPMA requirements if it is more than one person.

Question: Is there a requirement for an application checklist?

Answer: Yes, section 604.2(3)(b). This helps you determine a complete application, and the review cycles can begin.

Question: Todd, Do you advise your clients to NOT hold a public hearing for subdivisions because they are administrative NOT legislative?

Answer: Yes, I have advised some clients that way.

Question: The legislation requires us to designate an "administrative land use authority" for preliminary plats and allows it to be staff or the Planning Commission (PC), but can it be both? Meaning, can we designate staff to be the administrative LAU with a caveat that staff can refer it to PC? Can we have it be staff for minor subdivisions (9 lots or less) and PC for major subdivisions? We would like to have the option of referring to PC if we feel that the subdivision may have a great deal of interest with the community or some other similar circumstance but for the most part, be able to have them handled with staff.

Answer: The administrative land use authority for subdivisions may be a group of people of which one could be a planning commission member. That said, you are now approving the application against your complete application checklist and whatever you may define as the review parameters for preliminary review. You need to spell out those referral standards in ordinance instead of having staff exercise discretion about when and what to refer. Since subdivisions should be approved or rejected based on the complete application checklist and standards, the potential public interest in the subdivision should not be considered. This is a purely administrative action and the statute reflects that. The small subdivision standard for staff and larger subdivisions at PC at the preliminary stage is fine.

Question: We currently have a pre-ap meeting that we highly recommend and then, what we refer to as the concept plan, is submitted with the application and goes through our Design Review Committee (DRC), which is mandatory, and then through this process we end up with the final plan which goes to the Planning Commission. Is it this DRC process that we can no longer mandate? It seems to me that if we get 4 opportunities for review, that this would be our DRC process. I have attached our subdivision approval and process checklist, which I hope will make my questions more coherent. I think I am getting caught up with terminology rather than the actions/process and that is what is confusing me.

Answer: You can continue to use a DRC review process, but you should clarify on your checklist that the city recommends a pre-application meeting to review requirements for subdivisions with city staff. We recommend the meeting even though the meeting is not mandatory. When the **complete** application comes in officially, you have 15 days to convene the DRC and complete the staff review and make recommendations to the Administrative Land Use Authority for review and decision.

Question: In regards to HB406 10-9a-604.5(3)(d)(iv) states, "landscaping improvements that are not public landscaping improvements, as defined in section 10-9a-103, unless the landscaping improvements and completion assurance are required under the terms of a development agreement". There isn't a definition of public landscaping improvements in 10-9a-103. We are trying, wherever possible to use the same verbiage as the code but there isn't anything. I am assuming that we can use the language from 10-9a-604.5 which actually has a definition, correct?

Answer: You are correct about the missing definition so use 604.5. We highlighted that missing definition during the session but legislative research was comfortable with using 604.5. We will try to fix this in the next session.

Question: For those landscape bonds that we have previously required and collected, if the landscape improvements aren't made, are we still able to enforce them? They are all vested, is that correct? Or do we have to release all the landscape bonds that we currently have and then incorporate them in to a development agreement?

Answer: We recommend stopping the enforcement of bonds and requirements that are for private landscaping only. I am advising my clients (and my advice was the same before the statutory revisions this year) that landscaping requirements on private property should be limited to development agreement situations. There are exceptions to this, but not many. When a city does require landscaping on private property in a development agreement, I also include a bonding provision in the agreement.