Moab City Council Agenda Item  
Meeting Date: July 28, 2020

**Item:** Request for City Council direction on establishment of City administrative procedures for a change in use of City real property in non-emergency situations.

**Disposition:** Discussion and request for direction and input from the City Council for development of the procedures.

**Staff Presenter:** Laurie Simonson, City Attorney

**Attachment(s):**

- Attachment 1: Purposes – General Land Use Authority (Utah Code Annotated §10-9a-102.)
- Attachment 2: Planning Commission Powers and Duties (Moab Municipal Code §17.72.250.)
- Attachment 3: Matrix of advisory, land use authority, and appeal bodies. (Moab Municipal Code §17.72.100.)

**Background:**

The City Council has requested that City staff develop administrative procedures regarding the process to follow in the case of a change in use of City real property in non-emergency situations. These procedures would be in addition to, and would not supplant, the current statutory or regulatory process required by state law under Utah Code Annotated, Title 10, Chapter 9a (“Municipal Land Use, Development and Management Act” or “LUDMA”) or Moab Municipal Code, Title 17 (“Zoning”). (Note that a "public hearing" is required prior to adoption of any "land use ordinance," see Utah Code Annotated §§ 10-9a-205(1)(a), 10-9a-502(1)(b), and a "land use ordinance" is defined as a "planning, zoning, development, or subdivision ordinance of the municipality," id. § 10-9a-103(25).)

A mere change in use of City real property that does not otherwise trigger any requirements under LUDMA or Moab Municipal Code Title 17 does not require additional procedures. However, the procedures are being
implemented at the request of the City Council with an important goal of increasing transparency and public process.

**Authority:**

The City Manager would have the authority to adopt these procedures as administrative procedures under the authority provided to the City Manager in Moab Municipal Code §2.10.040 “Powers and Duties.”

The City Council would have the authority to adopt these as “rules” pursuant to state law - “LUDMA” at Utah Code Annotated §10-9a-102. (See Attachment 1.)

**Scope:**

These procedures would not apply to the lease, transfer or disposition of City property which is governed by Utah Code Annotated §10-8-2. “Appropriations -- Acquisition and disposal of property -- Municipal authority -- Corporate purpose -- Procedure -- Notice of intent to acquire real property.”

These procedures would also not apply to decisions or orders made by the “chief executive officer” pursuant to the state Emergency Management Act (Utah Code Annotated §53-2a-205 *et. seq.*)

**Definitions:**

The creation of the contemplated administrative procedures requires definition of the terms used.

The following relevant terms are already defined as follows in the Moab Municipal Code:

“In the City.” The words “in the City” mean and include all territory over which the City now has, or shall hereafter acquire, jurisdiction for the exercise of its police powers or other regulatory powers. (Moab Municipal Code §1.04.020(9).

“Owner.” The word “owner,” applied to a building or land, includes any part owner, joint owner, tenant in common, tenant in partnership, joint tenant or
tenant by the entirety of the whole or of a part of such building or land. (Moab Municipal Code §1.04.020(17).)

“Real property” includes lands, tenements and hereditaments. (Moab Municipal Code §1.04.020(23).)

The following relevant terms are already defined as follows in state law:

"City" means a municipality that is classified by population as a city of the first class, a city of the second class, a city of the third class, a city of the fourth class, or a city of the fifth class, under Section 10-2-301. (Utah Code Annotated §10.1.104.)

The following terms are not currently defined in the Moab Municipal Code or state law.

“City Property”

“Change in Use”

Questions for Council:

1. Is “Change in use” defined as a permanent change or does it include temporary changes?
   a. If temporary, what is the definition of “temporary?” (60 days, 90 days, 120 days, etc.?)
   b. For example: “These procedures are applicable to a change in use of City property for a minimum of ___ consecutive days.”
   c. Another example: “These procedures are applicable to a change in use of City property for ______ consecutive days or more.”

2. What is the definition of “change in use?”
   a. New use for that parcel or just any different use than the current use?
b. Are there “changes in use” that are so small in acreage, scope, or have a de minimis impact that should be exempt from this process?

c. Are there “changes in use” that are necessary for public health, safety, welfare, or the provision of critical services that should be exempt from this process?

3. Will the procedures apply to all real property where the City is the owner or just public parks and/or public spaces?

4. Desire for a “public meeting” or a “public hearing?”

a. “Public meeting” means – a meeting that is required to be open to the public under Utah's Open and Public Meetings Act, but at which public comment is not necessarily allowed. Utah Code Annotated §10-9a-103(53).

b. “Public hearing” means – A "public hearing" is "a hearing at which members of the public are provided a reasonable opportunity to comment on the subject of the hearing," Utah Code Annotated §10-9a-103(52)

5. Who will be the decision-making authority and under what circumstances?

   a. City Manager
   
   b. City Council

6. What are the criteria for approval of “change in use?”

   a. Under what conditions would the decision-making authority deny the change in use?

   b. What criteria would the decision-making authority use to make the decision?
Conclusion: These are threshold questions on which City staff requests direction in order to begin drafting the administrative procedures. (There will necessarily be other questions to be decided before the procedures are finalized.) City staff will take the direction and input received from the City Council and begin drafting the contemplated procedures for presentation to the City Council at a future meeting.