

**Senator David G. Buxton** proposes the following substitute bill:

**BUILDING REGULATION AMENDMENTS**

2020 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Paul Ray**

Senate Sponsor: David G. Buxton

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**LONG TITLE**

**General Description:**

This bill amends provisions relating to building regulation.

**Highlighted Provisions:**

This bill:

- defines terms;
- invites the Utah League of Cities and Towns to submit a report to the Business and Labor Interim Committee;
- allows a local planning commission to recommend the reduction of certain building design elements in a proposed general plan; and
- amends Nitrogen Oxide emission limits for natural gas-fired water heaters.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

This bill provides a special effective date.

**Utah Code Sections Affected:**

AMENDS:

**10-9a-403**, as last amended by Laws of Utah 2019, Chapters 327 and 376

**15A-6-102**, as last amended by Laws of Utah 2017, Chapter 236



17-27a-403, as last amended by Laws of Utah 2019, Chapters 327 and 376

63I-2-210, as last amended by Laws of Utah 2019, Chapters 136, 165, 255, and 510

ENACTS:

10-6-160.1, Utah Code Annotated 1953

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*Be it enacted by the Legislature of the state of Utah:*

Section 1. Section 10-6-160.1 is enacted to read:

**10-6-160.1. Report.**

(1) As used in this section, "plan review" means the same as that term is defined in Section 10-6-160.

(2) The Business and Labor Interim Committee shall invite the Utah League of Cities and Towns to submit a written report before the October 2020 interim meeting that describes:

(a) for any municipality that required a plan review between April 1, 2020, and October 1, 2020:

(i) the average number of business days from the day on which the plan review is requested to the day on which the plan review is completed;

(ii) the longest number of business days from the day on which the plan review is requested to the day on which the plan review is completed;

(iii) whether the municipality allowed nonsubstantive changes to a plan without requiring the plan to be re-submitted for review; and

(iv) reasons for any delay in completing a plan review; and

(b) for any municipality that required a building inspection between April 1, 2020, and October 1, 2020:

(i) the average number of business days from the day on which the inspection is requested to the day on which the inspection is completed;

(ii) the longest number of business days from the day on which the inspection is requested to the day on which the inspection is completed;

(iii) reasons for any delay in completing an inspection; and

(iv) the number of hours that an independent building inspector was used.

Section 2. Section 10-9a-403 is amended to read:

**10-9a-403. General plan preparation.**

(1) (a) As used in this section, "residential building design element" means for a single-family residential building:

(i) exterior building color;

(ii) type or style of exterior cladding material;

(iii) style or materials of a roof structure, roof pitch, or porch;

(iv) exterior nonstructural architectural ornamentation;

(v) location, design, placement, or architectural styling of a window or door, including a garage door;

(vi) the number or type of rooms;

(vii) the interior layout of a room; or

(viii) the minimum square footage of a structure.

(b) "Residential building design element" does not include for a single-family residential building:

(i) the height, bulk, orientation, or location of a structure on a lot; or

(ii) buffering or screening used to:

(A) minimize visual impacts;

(B) mitigate the impacts of light or noise; or

(C) protect the privacy of neighbors.

~~[(+)]~~ (2) (a) The planning commission shall provide notice, as provided in Section 10-9a-203, of its intent to make a recommendation to the municipal legislative body for a general plan or a comprehensive general plan amendment when the planning commission initiates the process of preparing its recommendation.

(b) The planning commission shall make and recommend to the legislative body a proposed general plan for the area within the municipality.

(c) The plan may include areas outside the boundaries of the municipality if, in the planning commission's judgment, those areas are related to the planning of the municipality's territory.

(d) Except as otherwise provided by law or with respect to a municipality's power of eminent domain, when the plan of a municipality involves territory outside the boundaries of the municipality, the municipality may not take action affecting that territory without the concurrence of the county or other municipalities affected.

88           ~~[(2)]~~ (3) (a) At a minimum, the proposed general plan, with the accompanying maps,  
89 charts, and descriptive and explanatory matter, shall include the planning commission's  
90 recommendations for the following plan elements:

91           (i) a land use element that:

92           (A) designates the long-term goals and the proposed extent, general distribution, and  
93 location of land for housing for residents of various income levels, business, industry,  
94 agriculture, recreation, education, public buildings and grounds, open space, and other  
95 categories of public and private uses of land as appropriate; and

96           (B) may include a statement of the projections for and standards of population density  
97 and building intensity recommended for the various land use categories covered by the plan;

98           (ii) a transportation and traffic circulation element that:

99           (A) provides the general location and extent of existing and proposed freeways, arterial  
100 and collector streets, public transit, active transportation facilities, and other modes of  
101 transportation that the planning commission considers appropriate;

102           (B) for a municipality that has access to a major transit investment corridor, addresses  
103 the municipality's plan for residential and commercial development around major transit  
104 investment corridors to maintain and improve the connections between housing, employment,  
105 education, recreation, and commerce;

106           (C) for a municipality that does not have access to a major transit investment corridor,  
107 addresses the municipality's plan for residential and commercial development in areas that will  
108 maintain and improve the connections between housing, transportation, employment,  
109 education, recreation, and commerce; and

110           (D) correlates with the population projections, the employment projections, and the  
111 proposed land use element of the general plan; and

112           (iii) for a municipality described in Subsection 10-9a-401(3)(b), a plan that provides a  
113 realistic opportunity to meet the need for additional moderate income housing.

114           (b) In drafting the moderate income housing element, the planning commission:

115           (i) shall consider the Legislature's determination that municipalities shall facilitate a  
116 reasonable opportunity for a variety of housing, including moderate income housing:

117           (A) to meet the needs of people of various income levels living, working, or desiring to  
118 live or work in the community; and

(B) to allow people with various incomes to benefit from and fully participate in all aspects of neighborhood and community life;

(ii) for a town, may include, and for other municipalities, shall include, an analysis of how the municipality will provide a realistic opportunity for the development of moderate income housing within the next five years;

(iii) for a town, may include, and for other municipalities, shall include, a recommendation to implement three or more of the following strategies:

(A) rezone for densities necessary to assure the production of moderate income housing;

(B) facilitate the rehabilitation or expansion of infrastructure that will encourage the construction of moderate income housing;

(C) facilitate the rehabilitation of existing uninhabitable housing stock into moderate income housing;

(D) consider general fund subsidies or other sources of revenue to waive construction related fees that are otherwise generally imposed by the city;

(E) create or allow for, and reduce regulations related to, accessory dwelling units in residential zones;

(F) allow for higher density or moderate income residential development in commercial and mixed-use zones, commercial centers, or employment centers;

(G) encourage higher density or moderate income residential development near major transit investment corridors;

(H) eliminate or reduce parking requirements for residential development where a resident is less likely to rely on the resident's own vehicle, such as residential development near major transit investment corridors or senior living facilities;

(I) allow for single room occupancy developments;

(J) implement zoning incentives for low to moderate income units in new developments;

(K) utilize strategies that preserve subsidized low to moderate income units on a long-term basis;

(L) preserve existing moderate income housing;

(M) reduce impact fees, as defined in Section [11-36a-102](#), related to low and moderate

income housing;

(N) participate in a community land trust program for low or moderate income housing;

(O) implement a mortgage assistance program for employees of the municipality or of an employer that provides contracted services to the municipality;

(P) apply for or partner with an entity that applies for state or federal funds or tax incentives to promote the construction of moderate income housing;

(Q) apply for or partner with an entity that applies for programs offered by the Utah Housing Corporation within that agency's funding capacity;

(R) apply for or partner with an entity that applies for affordable housing programs administered by the Department of Workforce Services;

(S) apply for or partner with an entity that applies for programs administered by an association of governments established by an interlocal agreement under Title 11, Chapter 13, Interlocal Cooperation Act;

(T) apply for or partner with an entity that applies for services provided by a public housing authority to preserve and create moderate income housing;

(U) apply for or partner with an entity that applies for programs administered by a metropolitan planning organization or other transportation agency that provides technical planning assistance;

(V) utilize a moderate income housing set aside from a community reinvestment agency, redevelopment agency, or community development and renewal agency; ~~and~~

(W) reduce residential building design elements; and

~~[(W)]~~ (X) any other program or strategy implemented by the municipality to address the housing needs of residents of the municipality who earn less than 80% of the area median income; and

(iv) in addition to the recommendations required under Subsection ~~[(2)]~~ (3)(b)(iii), for a municipality that has a fixed guideway public transit station, shall include a recommendation to implement the strategies described in Subsection ~~[(2)]~~ (3)(b)(iii)(G) or (H).

(c) In drafting the land use element, the planning commission shall:

(i) identify and consider each agriculture protection area within the municipality; and

(ii) avoid proposing a use of land within an agriculture protection area that is

inconsistent with or detrimental to the use of the land for agriculture.

(d) In drafting the transportation and traffic circulation element, the planning commission shall:

(i) consider the regional transportation plan developed by its region's metropolitan planning organization, if the municipality is within the boundaries of a metropolitan planning organization; or

(ii) consider the long-range transportation plan developed by the Department of Transportation, if the municipality is not within the boundaries of a metropolitan planning organization.

(3) The proposed general plan may include:

(a) an environmental element that addresses:

(i) the protection, conservation, development, and use of natural resources, including the quality of air, forests, soils, rivers and other waters, harbors, fisheries, wildlife, minerals, and other natural resources; and

(ii) the reclamation of land, flood control, prevention and control of the pollution of streams and other waters, regulation of the use of land on hillsides, stream channels and other environmentally sensitive areas, the prevention, control, and correction of the erosion of soils, protection of watersheds and wetlands, and the mapping of known geologic hazards;

(b) a public services and facilities element showing general plans for sewage, water, waste disposal, drainage, public utilities, rights-of-way, easements, and facilities for them, police and fire protection, and other public services;

(c) a rehabilitation, redevelopment, and conservation element consisting of plans and programs for:

(i) historic preservation;

(ii) the diminution or elimination of a development impediment as defined in Section 17C-1-102; and

(iii) redevelopment of land, including housing sites, business and industrial sites, and public building sites;

(d) an economic element composed of appropriate studies and forecasts, as well as an economic development plan, which may include review of existing and projected municipal revenue and expenditures, revenue sources, identification of basic and secondary industry,

primary and secondary market areas, employment, and retail sales activity;

(e) recommendations for implementing all or any portion of the general plan, including the use of land use ordinances, capital improvement plans, community development and promotion, and any other appropriate action;

(f) provisions addressing any of the matters listed in Subsection 10-9a-401(2) or (3); and

(g) any other element the municipality considers appropriate.

Section 3. Section 15A-6-102 is amended to read:

**15A-6-102. Nitrogen Oxide emission limits for natural gas-fired water heaters.**

(1) As used in this section:

(a) "BTU" means British Thermal Unit.

(b) (i) "Heat input" means the heat of combustion released by fuel burned in a water heater based on the heating value of the fuel.

(ii) "Heat input" does not include the enthalpy of a water heater's incoming combustion air.

(c) "Heat output" means the enthalpy of a water heater's working fluid output.

(d) "Natural gas-fired water heater" means a device that heats water:

(i) using natural gas combustion;

(ii) for use external to the device at a pressure that is less than or equal to 160 pounds per square inch gage; and

(iii) to a thermostatically controlled temperature less than or equal to:

(A) 210 degrees Fahrenheit; or

(B) 99 degrees Celsius.

(e) "ppm" means parts of Nitrogen Oxide per million parts of water heater air output.

(f) "Recreational vehicle" means the same as that term is defined in Section 13-14-102.

(2) On and after July 1, 2018, a person may not sell or install a natural gas-fired water heater with an emission rate greater than the following limits:

(a) except as provided in Subsection (6), for a water heater that has a heat input of less than or equal to 75,000 BTU per hour that is not installed in a mobile home, a limit of:

(i) 10 nanograms per Joule of heat output; or

(ii) 15 ppm, corrected to 3% oxygen;



(b) for a water heater that has a heat input of greater than 75,000 BTU per hour and less than 2,000,000 BTU per hour that is not installed in a mobile home, a limit of:

(i) 14 nanograms per Joule of heat output; or

(ii) 20 ppm, corrected to 3% oxygen;

(c) for a water heater installed in a mobile home, a limit of:

(i) 40 nanograms per Joule of heat output; or

(ii) 55 ppm, corrected to 3% oxygen;

(d) for a pool or spa water heater with a heat input that is less than or equal to 400,000 BTU per hour, a limit of:

(i) 40 nanograms per Joule of heat output; or

(ii) 55 ppm, corrected to 3% oxygen; and

(e) for a pool or spa water heater with a heat input of greater than 400,000 BTU per hour and less than 2,000,000 BTU per hour, a limit of:

(i) 14 nanograms per Joule of heat output; or

(ii) 20 ppm, corrected to 3% oxygen.

(3) A water heater manufacturer shall use California South Coast Air Quality Management District Method 100.1 to calculate the emissions rate of a water heater subject to this section.

(4) A water heater manufacturer shall display on a water heater subject to this section, as a permanent label, the model number and the Nitrogen Oxide emission rate of the water heater.

(5) The requirements of this section do not apply to:

(a) a water heater using a fuel other than natural gas;

(b) a water heater used in a recreational vehicle;

(c) a water heater manufactured in the state for sale and shipment outside of the state;

or

(d) a water heater manufactured before July 1, 2018.

(6) A person may sell or install a natural gas-fired water heater with an emission rate greater than the limits established in Subsection (2)(a) if:

(a) the water heater is replacing a water heater of equal BTUs per hour;

(b) there is not available for purchase in the United States a water heater that:

- (i) has an input of equal BTUs per hour as the water heater being replaced; and
- (ii) meets the limits established in Subsection (2)(a); and
- (c) the purpose of the water heater is to heat water and provide space heating.

Section 4. Section **17-27a-403** is amended to read:

**17-27a-403. Plan preparation.**

(1) (a) The planning commission shall provide notice, as provided in Section **17-27a-203**, of its intent to make a recommendation to the county legislative body for a general plan or a comprehensive general plan amendment when the planning commission initiates the process of preparing its recommendation.

(b) The planning commission shall make and recommend to the legislative body a proposed general plan for:

- (i) the unincorporated area within the county; or
- (ii) if the planning commission is a planning commission for a mountainous planning district, the mountainous planning district.

(c) (i) The plan may include planning for incorporated areas if, in the planning commission's judgment, they are related to the planning of the unincorporated territory or of the county as a whole.

(ii) Elements of the county plan that address incorporated areas are not an official plan or part of a municipal plan for any municipality, unless it is recommended by the municipal planning commission and adopted by the governing body of the municipality.

(iii) Notwithstanding Subsection (1)(c)(ii), if property is located in a mountainous planning district, the plan for the mountainous planning district controls and precedes a municipal plan, if any, to which the property would be subject.

(2) (a) At a minimum, the proposed general plan, with the accompanying maps, charts, and descriptive and explanatory matter, shall include the planning commission's recommendations for the following plan elements:

- (i) a land use element that:

(A) designates the long-term goals and the proposed extent, general distribution, and location of land for housing for residents of various income levels, business, industry, agriculture, recreation, education, public buildings and grounds, open space, and other categories of public and private uses of land as appropriate; and

(B) may include a statement of the projections for and standards of population density and building intensity recommended for the various land use categories covered by the plan;

(ii) a transportation and traffic circulation element that:

(A) provides the general location and extent of existing and proposed freeways, arterial and collector streets, public transit, active transportation facilities, and other modes of transportation that the planning commission considers appropriate;

(B) addresses the county's plan for residential and commercial development around major transit investment corridors to maintain and improve the connections between housing, employment, education, recreation, and commerce; and

(C) correlates with the population projections, the employment projections, and the proposed land use element of the general plan;

(iii) a plan for the development of additional moderate income housing within the unincorporated area of the county or the mountainous planning district, and a plan to provide a realistic opportunity to meet the need for additional moderate income housing; and

(iv) before May 1, 2017, a resource management plan detailing the findings, objectives, and policies required by Subsection 17-27a-401(3).

(b) In drafting the moderate income housing element, the planning commission:

(i) shall consider the Legislature's determination that counties should facilitate a reasonable opportunity for a variety of housing, including moderate income housing:

(A) to meet the needs of people of various income levels living, working, or desiring to live or work in the community; and

(B) to allow people with various incomes to benefit from and fully participate in all aspects of neighborhood and community life; and

(ii) shall include an analysis of how the county will provide a realistic opportunity for the development of moderate income housing within the planning horizon, which may include a recommendation to implement three or more of the following strategies:

(A) rezone for densities necessary to assure the production of moderate income housing;

(B) facilitate the rehabilitation or expansion of infrastructure that will encourage the construction of moderate income housing;

(C) facilitate the rehabilitation of existing uninhabitable housing stock into moderate

336 income housing;

337 (D) consider county general fund subsidies or other sources of revenue to waive

338 construction related fees that are otherwise generally imposed by the county;

339 (E) create or allow for, and reduce regulations related to, accessory dwelling units in

340 residential zones;

341 (F) allow for higher density or moderate income residential development in

342 commercial and mixed-use zones, commercial centers, or employment centers;

343 (G) encourage higher density or moderate income residential development near major

344 transit investment corridors;

345 (H) eliminate or reduce parking requirements for residential development where a

346 resident is less likely to rely on the resident's own vehicle, such as residential development near

347 major transit investment corridors or senior living facilities;

348 (I) allow for single room occupancy developments;

349 (J) implement zoning incentives for low to moderate income units in new

350 developments;

351 (K) utilize strategies that preserve subsidized low to moderate income units on a

352 long-term basis;

353 (L) preserve existing moderate income housing;

354 (M) reduce impact fees, as defined in Section [11-36a-102](#), related to low and moderate

355 income housing;

356 (N) participate in a community land trust program for low or moderate income

357 housing;

358 (O) implement a mortgage assistance program for employees of the county or of an

359 employer that provides contracted services for the county;

360 (P) apply for or partner with an entity that applies for state or federal funds or tax

361 incentives to promote the construction of moderate income housing;

362 (Q) apply for or partner with an entity that applies for programs offered by the Utah

363 Housing Corporation within that agency's funding capacity;

364 (R) apply for or partner with an entity that applies for affordable housing programs

365 administered by the Department of Workforce Services;

366 (S) apply for or partner with an entity that applies for services provided by a public

housing authority to preserve and create moderate income housing;

(T) apply for or partner with an entity that applies for programs administered by a metropolitan planning organization or other transportation agency that provides technical planning assistance;

(U) utilize a moderate income housing set aside from a community reinvestment agency, redevelopment agency, or community development and renewal agency; ~~and~~

(V) reduce residential building design elements as defined in Section 10-9a-403; and

~~(V)~~ (W) consider any other program or strategy implemented by the county to address the housing needs of residents of the county who earn less than 80% of the area median income.

(c) In drafting the land use element, the planning commission shall:

(i) identify and consider each agriculture protection area within the unincorporated area of the county or mountainous planning district; and

(ii) avoid proposing a use of land within an agriculture protection area that is inconsistent with or detrimental to the use of the land for agriculture.

(d) In drafting the transportation and traffic circulation element, the planning commission shall:

(i) consider the regional transportation plan developed by its region's metropolitan planning organization, if the relevant areas of the county are within the boundaries of a metropolitan planning organization; or

(ii) consider the long-range transportation plan developed by the Department of Transportation, if the relevant areas of the county are not within the boundaries of a metropolitan planning organization.

(3) The proposed general plan may include:

(a) an environmental element that addresses:

(i) to the extent not covered by the county's resource management plan, the protection, conservation, development, and use of natural resources, including the quality of air, forests, soils, rivers and other waters, harbors, fisheries, wildlife, minerals, and other natural resources; and

(ii) the reclamation of land, flood control, prevention and control of the pollution of streams and other waters, regulation of the use of land on hillsides, stream channels and other

environmentally sensitive areas, the prevention, control, and correction of the erosion of soils, protection of watersheds and wetlands, and the mapping of known geologic hazards;

(b) a public services and facilities element showing general plans for sewage, water, waste disposal, drainage, public utilities, rights-of-way, easements, and facilities for them, police and fire protection, and other public services;

(c) a rehabilitation, redevelopment, and conservation element consisting of plans and programs for:

(i) historic preservation;

(ii) the diminution or elimination of a development impediment as defined in Section 17C-1-102; and

(iii) redevelopment of land, including housing sites, business and industrial sites, and public building sites;

(d) an economic element composed of appropriate studies and forecasts, as well as an economic development plan, which may include review of existing and projected county revenue and expenditures, revenue sources, identification of basic and secondary industry, primary and secondary market areas, employment, and retail sales activity;

(e) recommendations for implementing all or any portion of the general plan, including the use of land use ordinances, capital improvement plans, community development and promotion, and any other appropriate action;

(f) provisions addressing any of the matters listed in Subsection 17-27a-401(2) or (3)(a)(i); and

(g) any other element the county considers appropriate.

Section 5. Section 63I-2-210 is amended to read:

**63I-2-210. Repeal dates -- Title 10.**

(1) Section 10-6-160.1 is repealed January 1, 2021.

[(+)] (2) Subsection 10-9a-304(2), regarding municipal authority over property located within a mountainous planning district, is repealed June 1, 2021.

[(2)] (3) When repealing Subsection 10-9a-304(2), the Office of Legislative Research and General Counsel shall, in addition to the office's authority under Subsection 36-12-12(3), make necessary changes to subsection numbering and cross references.

Section 6. **Effective date.**

- 429        (1) Except as provided in Subsection (2), this bill takes effect on May 12, 2020.
- 430        (2) The actions affecting Section [15A-6-102](#) take effect on July 1, 2020.