

“Government is and ought to be nothing whatever but the united power of the people, organized, not to be an instrument of oppression and mutual plunder among citizens; but, on the the contrary, to secure to every one his own, and to cause justice and security to reign.”

—Frédéric Bastiat



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THE LIBERTAS GUIDE TO LOCAL GOVERNMENT



The Libertas Guide to Local Government



Libertas Guide to Local Government



Libertas Institute
Lehi, Utah

Libertas Guide to Local Government — 1st ed.

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Introduction

Libertas Institute offers its heartfelt appreciation to you for your service as an elected official. It is an honor and a great responsibility to serve your local community, and we appreciate the sincere effort of individuals who are willing to be involved and ensure that their neighbors are unleashed from restrictions that prevent them from peacefully building the lives they want.

Admittedly, local government can reveal some gray areas when it comes to political philosophy. These can be tricky waters to navigate, especially when dealing with and living among neighbors with differing desires and perspectives. Oftentimes, it can be easier to know where we stand on federal or state issues than on local issues.

When it comes to government, where the amount of information is so expansive, we all have areas of both understanding and ignorance. It is simply impossible for one person to have considered and researched everything. For these reasons, we hope that this pamphlet provides clarification, perspective, and helpful resources to assist you.

This pamphlet is a practical guide that covers the role and authority of local government. But most importantly, its goal is to empower you to understand and protect inalienable rights in the context of local issues. The pamphlet includes historical background, case law, governmental principles, and questions that will aid

you in the discovery process. The most common local governmental topics have been arranged in a glossary and made as concise as possible for convenience.

We are available for clarification and always appreciative of an open exchange of information and dialogue to review and implement these ideas. Send us an email at info@libertas.org and let's start a conversation.

Thank you for your willingness to represent your community — may it be done with virtue and based on sound principles.

Political Subdivisions and the Source of Power

Local governments exist to efficiently organize and implement state responsibilities and powers. In Utah's early history, it would have been highly inefficient for a state official to make the trek from Salt Lake City down to Springdale to gather information and make a decision.

The administrative difficulties posed by the early 20th century (some of which continue today) made it prudent for the state to delegate and subdivide some limited powers and responsibilities to smaller organizations. So, that is exactly what the state did.

Counties, cities, special districts, and all other forms of local government are political subdivisions of the state. Just as the states delegate some of their authority under the US Constitution to the federal government — on issues where exercise of these authorities makes more

sense at that level, such as national defense — the state also delegates some of its authority to the local level as needed. All power lies in the state to make these decisions of delegation.

Some individuals are persuaded by the notion that local governments are an improved or superior form of governance due to their proximity to the people they govern. Though the desire to represent those who have elected you is appropriate and admirable, this belief of local government superiority is misguided.

Local governments have no inherent authority of their own; Utah has no charter cities, no autonomous local governments, nor anything of the sort. Local governments are not legislative bodies in a broad sense, able to enact whatsoever they will; they exist, essentially, to carry out state mandates and delegations of responsibility and only have authority as a result of those state decisions.

In the United States, the relationship between a local and state government is guided, by default, by what is called Dillon's Rule. Dillon's Rule was borne out of an 1868 Iowa court case and named after the Iowa Supreme Court Justice John F. Dillon.¹

Dillon's Rule holds that local governments have only the powers that have been explicitly granted them by their respective state. However, Utah has some specific case law which diverges from this federal precedent.

In 1980, a candidate for county office was accused of violating a Salt Lake County ordinance regarding campaign

¹ *Hunter v. Pittsburgh*, 207 U. S. 161 (1907).

finance disclosure. He argued that the county lacked the authority to enact such an ordinance, and it was thus unconstitutional.

The Utah Supreme Court disagreed. They found that the ordinance was valid. Thus, a strict application of Dillon's rule was rejected.

The court articulated that, even though the legislature did not specifically grant power to pass such an ordinance, they did grant both cities and counties the powers to enact all necessary measures to promote the general health, safety, and welfare of their citizens².

In interpreting this modification of Dillon's rule, some have assumed that Utah subsequently adopted a "home rule" system in which local governments have the unbounded power to govern themselves, absent a restriction to the contrary by the state. This is incorrect.

Utah has adopted something close to a statutory home rule framework. This means that courts will generally interpret any grants of power liberally in favor of local governments.

However, it also means that the state legislature retains the power to limit or direct any actions taken by local governments, as their authority only exists as a subdivided delegation of authority from the state.

In short, local governments do have broad powers to take actions they consider to be contributing to public health, safety, and welfare, within the bounds of existing statu-

tory law. That power is accompanied by an important caveat: the decisions and powers of a local government can be at any time augmented, restricted, or even repealed by the legislature.

We would like to offer a perhaps more important caveat: the fact that you might have the power to restrict freedoms doesn't mean that you should.

Many who support powerful local governments will invoke the phrase "local control." If the goal is to have the most local control possible, it's worth noting that families and individuals are the most local of entities. They should thus be afforded as much control over their own lives as possible.

If we truly believe that those closest to the people govern best, then we ought to empower individuals and families to govern themselves in every possible sense. Your mission should be to champion local control in the lives of individuals, not necessarily local *government* control.

The Role of a Local Government

The primary goal of a local government should be to reasonably and minimally ensure the health, safety, and welfare of residents within its jurisdiction. This goal will certainly look different depending on if you are a member of a health department, a city council, or a county board of commissioners.

Broadly speaking, local governments act as service providers of public goods and utilities. In theory, local governments don't have to provide these services — the

² *Utah v. Hutchinson*, 624 P.2d 1116 (UT 1980).

state could dissolve all local governments and do it themselves, or private groups could provide all the same services. But this job has traditionally been delegated to local governments because they can provide infrastructure and essential services to a wide range of people in an efficient, fair manner.

In this sense, community control (as opposed to the state) can be beneficial. In many cases, there are needs that are specific to certain communities and are best dealt with by political subdivisions closest to the people being served, who understand the nuances and circumstances in that area. If that is the case, your job is to deal with those needs in the least-restrictive manner possible.

If, in order to provide your services, you are interrupting people's lives and infringing upon their rights, you have most likely exceeded your role.

Some seem to believe that a local government can (and should) do whatever the community asks of it. If this is the approach you employ, your philosophy of government will necessarily be guided by whatever the majority supposedly believes with little adherence to principle. The community's opinion can change rapidly and your work should be more forward looking than whatever the current popular opinion prescribes.

The role of local government should be defined and narrow, not abstract and expansive, subject to the ever-changing interests of the voting majority.

The rights of the minority should always be considered and protected, never undermined merely because a majority wants something.

State and federal governments are often held to high standards and are heavily scrutinized. But when it comes to local government, many seem to think that they can do no wrong.

There are several possible explanations for this phenomenon. Small, local governments are more clearly made up of people who community members know or can easily access, and they don't often address hot button issues. These facts can make local governments feel less threatening and less impactful.

Despite this, local governments should be scrutinized and held to the same standards as any other form of government. The same principles that guide our skepticism and decision making on a national scale should similarly guide us on a local scale.

If the federal government took a person's property, evaded accountability, or violated the Constitution, the public would be outraged. We should be just as outraged when such things happen on the local level.

In your time as an elected official, your constituents will do things that you, and others, disagree with or do not condone. People might even try to convince you to use the force of the government to prohibit or restrict these behaviors.

If behavior is causing real and tangible harm, that is understandable. However, government power should not be used to restrict undesirable behavior that does not rise to the level of articulable and demonstrable harm, no matter how loudly some may call for "local control" to occur. Apply the Golden Rule in your governance and

treat others the way you would want to be treated if you were in their shoes.

Excessive government, even at the local level, can create inefficiencies and infringe on individual rights. Your decisions should be directly related to your particular role and narrowly tailored to meet the specific needs of your community.

You might be a county official thinking this discussion only applies to city officials. But remember, you are the direct administrator and local government over the unincorporated portions of your county. Regardless of what position you hold, consider how you can fulfill your role without restricting the individual freedoms or property rights of those you serve.

The Role of an Elected Official

What is your job in all of this? You have been elected to represent the people of your constituency, but what does that mean?

You should act as a voice and an advocate for those you represent. You are their voice in making decisions that will impact their daily lives, sometimes quite significantly.

Avoid the tempting perspective that you know what is best for everyone; listen to the concerns and opinions of your community, including those who dissent on any given issue, and balance these interests with constitutional principles and best legal practices.

It is important to note that your job is to represent all the people in your constituency — those who are different

from you, those who didn't vote for you, and those who are in the minority. It is likely that, at some point, you will feel pressured to overrule a minority of people because of the opinions of the majority.

We would ask you to consider not only the number of people supporting a position or how loudly they advocate, but also the interests at stake and principles at issue. The convenience or aesthetic preferences of the majority, for example, should never be prioritized above the property rights or the free speech of the minority.

An inappropriate deference to popular opinion can allow the majority to rule tyrannically over the minority. This can result in harmful policy decisions that may not be apparent until you are in the minority yourself. History offers many cases of oppression of the minority population, and they need not involve physical pain or death to count.

Oppression of the minority can include restrictions on speech for certain protestors most people find annoying, taxes on the rich, limiting how certain people can use their property, and more. Many do not realize that “local control” can easily lead to this oppression if it is not guided (and restricted) by sound principles.

Another compelling voice that you will likely encounter is that of your staff. Staff members are trained professionals who can be very helpful as you fulfill your role as an elected official. You should work to encourage and support a lean and efficient staff made up of professional individuals. Staff members who exemplify personal responsibility and integrity will help you execute your duties effectively.

While elected officials tend to have ongoing turnover, members of staff can work in the same position for decades. You should be careful not to let unelected officials become the de facto decision makers. Staff might suggest a course of action that seems best in their judgment, but these recommendations should not receive outsized deference, especially when weighed against the interests of the people who elected you.

It is important to stay vigilant and remember that you should be responsive to the public who elected you. Most of those people may not be able to regularly attend your meetings or write to you repeatedly. Staff members will certainly be able to aid you in the decision making process, but their perspectives will not necessarily be correct or sufficiently protective of the rights of those who would be affected.

Individual Responsibility

“All power is inherent in the people.”

Thomas Jefferson

“Local control” has long been treated as the catchphrase of local government. It’s not a bad motto to live by, generally, but consider that local control can be even more local than the municipal or county government.

The individual and the family are the most local entities that exist. Individuals are empowered with control over themselves when they are free from unreasonable restrictions. You can guarantee your constituents the most control over their lives by pursuing the goal of local *responsibility*, not necessarily local *control*.

It is a sentiment often attributed to Thomas Jefferson that “that government is best which governs least.”¹ The job of a local government is to facilitate necessary services and infrastructure as smoothly and efficiently as possible.

As an elected official, your input in and control over the day-to-day lives of your constituents should be kept to a minimum. Your governance should not keep people from going about their lives as they please, so long as they are not harming others.

Simply put, any restrictions on local liberties should be narrowly tailored to protect public health and safety. Your efforts should be focused on handling scenarios that pose a significant, specific, and articulable threat to residents.

In an attempt to be proactive, some elected officials enact ordinances to manage theoretical or hypothetical scenarios that would constitute, at most, a marginal impact.

1 Peterson, Merril D. *The Jefferson Image in the American Mind*. (Charlottesville: University Press of Virginia, 1960), 79.

The problem is that while these policies cast a wide net in order to address a vague problem, they can also lead to heavily restrictive and unnecessary laws, and produce a disproportionately negative impact on those affected.

It’s no surprise that this happens because individual rights can be difficult to prioritize, especially when balancing the competing concerns of the community. During your time as an elected official, people will do things that you don’t like or agree with. However, the activities that you regulate should be limited to those that cause specific and articulable harm to an identifiable victim. If no harm is done, why regulate?

In the short term, your constituents may not be concerned with the protection of individual liberties. Regardless, we urge you to safeguard these rights by focusing efforts on mitigating actual harms and shying away from restricting rights. The short-term gratification from a certain political decision and its outcome is not justification to negatively impede the long-term exercise of one’s rights.

Ends don’t justify means.

This suggestion might elicit concern that it is much more difficult to create and enforce particularized ordinances than it is to make broad, sweeping policies that address even the potential for harm. This is absolutely true. It is difficult work to protect rights that would be easier to ignore in pursuit of administrative convenience.

As a local elected official, you are tasked with the difficult job of balancing the safety and well-being of a community with the principles of freedom and self-governance.

This is not easy. The answers are not all black-and-white. That's the kind of difficult work and exceptional decision-making that we, and your constituents, expect from you. To aid you in this process, we want to provide some helpful insights and resources.

In the following pages you will find a discussion on common obstacles faced when it comes to striking a balance between individual responsibility and community peace. This is by no means an exhaustive list. We have included some of the issues that you will most likely encounter during your time as an elected official.

Case Studies

Daytime Curfews

Localities and school districts will sometimes struggle to deal with young people who are not attending school and are, instead, loitering or spending time in public places during the day.

One Common Approach: Unreasonably Restrictive Paternalism

In an attempt to combat these occasional issues, some cities impose a daytime curfew for juveniles.² Daytime curfews are local laws which establish that if a juvenile is in a public place during school hours, they can be detained by law enforcement.

² Ogden, Utah, § 11-7-1. https://codelibrary.amlegal.com/codes/ogdencityut/latest/ogdencity_ut/0-0-0-15791

The problem is, this gives authorities the presumptive power to stop or detain any juvenile, despite otherwise lawful behavior, because of a suspicion that the child may be subject to state compulsory education laws.

While these laws are ostensibly designed to curb juvenile crime and punish habitually absent students, they are misguided. School attendance is an issue that should be managed by parents and school administrators, and should not form the basis for action by the government against its residents. Police should not be bothered with babysitting children.

Imagine if local governments mandated more of these issues. Should you be legally requiring minors to brush their teeth? Should you mandate that children do their chores each day? Dental hygiene and family productivity are certainly good for society, and you might choose to use your influence to encourage such behavior, but that is a very different thing than using the law to criminalize those who do not sufficiently comply.

Requirements and restrictions for such minor issues instigate more low-priority altercations between police officers and residents, creating the potential for physical conflict stemming from an issue better dealt with privately.

A Better Way: Leave Parenting to Parents

Instead of implementing a policy like this (or leaving existing such policies on the books from decades past), limit the number of personal affairs that your jurisdiction is involved in. This suggestion may seem concerning

at first glance. You may worry that there will be an influx of crime and school absences if these laws are taken off the books. This concern is understandable, but fortunately, it is unsubstantiated.

In fact, over 43 of Utah's most populous cities have no daytime curfew code on the books.³ Notice, those cities have not faced hordes of marauding children during the day. They don't have irregularly high rates of crime. In fact, they seem to have managed just fine.

This type of policy is especially problematic in light of the fact that plenty of children are not required to be in school during the day. Utah has a very generous homeschooling law covering tens of thousands of students statewide, to say nothing of those in dual enrollment or private, charter, and online schools that create schedule flexibility which might allow for free time during the day for minors.

Daytime curfews are, therefore, archaic and unnecessary, a byproduct of a past time when all children were presumed to be on a school campus without exception. Similar curfews have even been declared unconstitutional in Washington state.⁴

Leave parenting to the parents, get ahead of the curve, and abolish daytime curfews.

3 Libertas Institute. "Freest Cities Index (Utah)." 2015. <http://www.freestcities.org/utah/2015/category/individual-liberty/>

4 ACLU Washington. "Washington Supreme Court Overturns Sumner Juvenile Curfew Law." November 20, 2019. <https://www.aclu-wa.org/news/washington-supreme-court-overturns-sumner-juvenile-curfew-law>.

Permits

There are many activities in your community that might impact others, are potentially dangerous, or that you might want to be aware of. This creates a problem. How do you ensure that potentially dangerous activities don't happen without your approval?

One Common Approach: A Protracted Process

To address this problem, many local governments institute permitting processes. These processes can govern anything from fireworks sales to home projects. While not prohibited outright, many activities have become heavily regulated by local governments via a permit requirement. In some cases, this makes sense. You obviously don't want residents engaged in something that could be harmful to other people or property.

The problem is that these processes can quickly become burdensome to those involved and even overwhelming to administer and enforce. When this happens, it can become difficult for your constituents to keep track of what activities do and do not require permits. Despite their best efforts, otherwise law-abiding citizens may find themselves violating local law — criminals for not complying with a permission slip requirement.

The application process alone can become backlogged and unorganized. Someone might apply for a permit and not hear for months or years if a decision was made. Someone could apply for a permit without fully understanding the requirements and expectations. Even worse, a person might apply for a permit, be rejected, and be

left with no further opportunities to pursue a reasonable activity.

These situations stifle growth, innovation, and the exercise of one's basic rights. They leave your neighbors frustrated and confused. Perhaps most concerning, they leave your local government potentially at risk for legal troubles.

A Better Way: Clear and Simple

Limit activities that require government permission as much as possible. Permits should be required only when the action, if gone unsupervised, will likely cause significant harm. When you must require a permit for something, the process should be understandable, fair, and prompt. The criteria for obtaining a permit should be clear and simple. Policies that grant permits based on subjective standards like "good cause" or "reasonable qualifications" are unfair to applicants and confusing to staff.

Applications should have specific requirements so that applicants know what goal posts must be met and employees do not accidentally move those goal posts. Permit processes should have a clear deadline by which decisions will be made on permit applications. In Minnesota, for example, state law governs local permitting processes and requires that a decision be made and explained within 60 days of receiving a complete application.⁵ Such state law does not presently exist in Utah, but you should set your own rules governing the decision timeline.

5 Strong Towns. "A Permit Process Should Never Take a Year. Here's a Different Way." April 22, 2019. <https://www.strongtowns.org/journal/2019/4/22/a-permit-process-should-never-take-a-year-heres-a-different-way>

That way, your constituents will know what they can expect and your employees will know what standards must be met.

If rejected applicants feel that a decision was unfair, an appeal process should be available, during which applicants may obtain a second opinion via judicial review. If a government entity has the first and final say on permit decisions, constituents may feel they are in a losing battle. That perception will not foster public trust and confidence.

If your permit processes meet these requirements, decisions can be made quickly and fairly. You should also be on the lookout for other opportunities to streamline and simplify your permitting processes (in addition to considering whether some permits should not be required at all, at least in some circumstances).

Cedar Hills set a great example when, at the start of 2021, they began accepting building permits digitally.⁶ Better processes will leave your agency with a lighter load, and citizens will leave with a positive impression of your leadership.

Short-term Rentals

Utah has increasingly become a tourist destination for visitors and in-state travellers alike. This has led to some creative approaches to tourist housing, including short-term rentals. Short-term rentals are properties or

6 Cedar Hills. "Digital Building Permit Application." January 4, 2021. <http://www.cedarhills.org/digital-building-permit-application/>

portions of a property that are rented out for a period of less than 30 days at a time.

These innovative housing prospects give travellers more options and bring tourists to parts of Utah that might not otherwise enjoy the benefits of the industry. However, they can also pose a problem for local governments: with more people comes more noise, traffic, and possibly even crime.

One Common Approach: Blanket Restrictions to Avoid Potential Problematic Behaviors

The potential harms of this innovative use of property have seemingly scared some local governments. In an attempt to combat these potential harms, many local governments have taken a broad approach and strictly prohibited any and all short-term rentals.

The concerns brought about by short-term rentals can be legitimate — excessive noise, parking issues, traffic congestion, and unruly garbage can all threaten the peaceful use and value of others' property — but an outright prohibition on short-term rentals is bad policy.

The problems with short-term rentals are not innate. Your neighbor might have their grandparents come stay with them for the weekend; would that be a problem? What if those grandparents compensate the family with homemade brownies or cash? Is it a problem now? No.

Being compensated for a temporary stay does not justify city intervention and regulation. The problem with short-term rentals are, of course, the potential nuisances they might actually cause.

And clearly, the nuisances brought about by short-term rentals would be harmful regardless of whether they were caused by short-term renters, long-term renters, permanent residents, or anyone else. Those issues should be dealt with individually, targeting the behavior itself. Simply prohibiting any action that might have negative consequences is not effective governance. To commit to that strategy would just mean outlawing human existence. Humans cause problems. Yours is the opportunity and responsibility to mitigate the harms of those problems while maximizing each individual's control over their own life and property.

A Better Way: A More Nuanced Approach

Instead of broadly prohibiting an activity that is harmless in and of itself, focus on the harms that could be caused. If you're concerned about excessive parking, craft ordinances that deal with that issue. If you're frustrated by noise complaints, enact law that specifically manages that issue.

For example, Springville recently passed a city ordinance that allows Springville residents to operate an owner-occupied short-term rental provided they comply with certain noise restrictions. The ordinance even provides the decibels which may not be exceeded.

While that may sound a bit ridiculous, specific ordinances protect people from broad restrictions that are subjective and therefore able to be unfairly enforced. Springville's ordinance is not perfect, but it is notable because it addresses a specific nuisance rather than broadly restricting a whole category of activity.

Like your ordinances, your enforcement should be specific and targeted. It is not worthwhile to hunt down short-term rental violations that are not causing actual problems. Instead, you should strategically respond to complaints and actual harms. When you are made aware of issues stemming from ordinance violations, address that specific concern with the property owner. Resist any urge to use a single or small sample of problems as a basis for regulating and restricting the actions of peaceful people who have not caused a problem.

Pets and Animals

Pets are a staple of single family home ownership, but they can sometimes be problematic. Animals can produce negative impacts including noise, smell, and waste. It's no surprise, then, that local governments often regulate pet ownership.

One Common Approach: Broad Restrictions

The keeping of pets or animals is often heavily restricted by local governments. In some cities, residents can only have up to four household pets.⁷ This arbitrary cap is mandated out of an abundance of concern for stray animals, potential nuisances, and violent encounters.

The problem is that such a broad cap on animal ownership presumes that the local government knows what is best for the animal owners within its boundaries. Once again, this approach arbitrarily restricts your residents

⁷ West Valley, Utah, § 23-3-108.

in an attempt to preempt potential harm (rather than addressing actual harm).

A Better Way: Flexibility in Code

Farmington has a particularly well-built body of code dealing with this issue. Their code separates animals into different sections: small animals, large animals, animals for a commercial purpose, and inherently dangerous animals.

Small animals like dogs and cats are allowed in all parts of the city. Large animals like horses and sheep and animals that are kept for a commercial purpose are allowed in specific parts of the city. Animals that are inherently dangerous are, by default, not allowed to be kept in the city. However, a resident may apply for an exception to this rule.

This ordinance is borne out of a genuine concern for the health and safety of residents. At the same time, it errs on the side of individual responsibility, allowing for broad acceptance of animals that pose no threat and even providing for appropriate exceptions for special cases of animals that might otherwise be considered dangerous.

Operating from a presumption of pet ownership provides residents the ability to exercise their rights responsibly while ensuring that government control is only asserted in circumstances of actual harm for which intervention may be needed.

Conclusion

It would be impossible to make an exhaustive list of ways in which the government interferes in the lives of others.

That is not what we have attempted to do. Rather, we have provided a few examples in order to drive home some important considerations that can be applied in any situation.

A community is at its best when the individuals within it are responsible for their own lives and decisions. You can increase and protect this individual responsibility by limiting the government's involvement in any scenario in which it is unnecessary. This chapter has discussed a few instances where you can likely decrease government involvement and principles which can help guide you in that process. But these principles can and should be applied to a wider range of issues impacting your neighbors.

Here are the key takeaways:

- Individuals are as local as it gets — give them as much responsibility as you can.
- Your local ordinances should be targeted to specific harms that you can prevent.
- Broadly preempting any potential harm will likely lead to overly restrictive regulations.
- Protecting individual responsibility while managing a community is a difficult task.

Property Rights

*“Property is surely a right of mankind
as real as liberty.”*

John Adams

The Utah Constitution states that everyone has the inherent and inalienable right to acquire, possess, and protect property.⁸ You should work to respect those rights and their substantive protection by defending an individual's ability to peacefully use their property however they see fit.

Property rights can be difficult to protect. Different properties are increasingly linked. It is often the case — or, at least, it appears to be — that what happens on one property affects another property. The equation can also become confusing when some wrongly suggest that government regulation should take the perceived impact on property value into consideration. These factors can make it very difficult to understand and protect actual property rights.

For example, nuisance ordinances allow you to regulate activities that harm surrounding property values. Nuisance tradition is rooted in common law and, at its core, has been crafted to protect competing property rights from each other. While these issues could easily lead to lawsuits in the event of an altercation between neighbors, modern regulations are, in theory, designed to preempt disputes and proactively avoid problems.

However, sometimes these preemptive policies can go too far. When restrictions are placed on the activities that can occur on an individual's property, you run the risk of infringing that individual's property rights. This becomes unreasonable, and potentially unconstitutional, when the restricted activity is not actually harming another person or their property.

⁸ Utah Constitution, Utah Code. 2021.

When restrictions are necessary, they should not be based on arbitrary assessments, aesthetic requirements, or mere majority opinions. Any restrictions should be narrowly tailored to address the actual harms involved while otherwise ensuring that people can peacefully engage in the activity where possible.

It can also be incredibly difficult to draw the line between what does and doesn't impact other people and their property.

Say, for example, you have a resident with an acute hoarding problem. Maybe that doesn't necessarily constitute a harm. What if their property has attracted rats that are spilling over into neighboring properties? Is there a way to protect neighbors from that nuisance without restricting the underlying activity? It would obviously be unreasonable to set limits on how much property a person can accumulate in their home; regulations should only focus on making sure people's activities don't negatively impact others.

As you evaluate these factors, we hope you will consider two important questions: First, is the legal action being considered going to infringe on the property rights of any individual? Second, is there a material threat to neighboring people and their property that needs to be addressed?

Below you will find some insights on answering these questions when they are applied to specific circumstances that you might encounter as an elected official.

Case Studies

Zoning

Local governments are often concerned with preserving the look and feel of their community. The problem is, most of the land making up a local jurisdiction is not owned by the government, but by a diverse set of people with varied backgrounds and interests. This can create a problem for which zoning laws seem to provide a solution.

In the early 1900s, state and local governments began to regulate more areas of commerce, including real property. Some of the earliest instances of zoning occurred in Los Angeles and New York City. Perhaps the most notable zoning case was that of Euclid, Ohio, which worked its way to the US Supreme Court.

In the case of *Village of Euclid v. Ambler Realty Co.*, the Village of Euclid instituted a zoning policy which restricted industrial development. Residents like Ambler Realty, who owned 68 acres of land in Euclid, felt that this policy unfairly harmed their property value — a resistance that highlights how improper zoning is often perceived by those affected as a massive overreach of government power. Though the lower court upheld that assertion, the Supreme Court eventually found that the zoning ordinance was not an unreasonable extension of a municipality's police power.

As a result of that case and subsequent supporting decisions, local governments have the power to enact certain

zoning ordinances. However, just because the Supreme Court has approved such practices in the past does not mean they are necessarily good policies, especially in the eyes of the citizens they affect. Done wrong, zoning can constitute an overreach of government power and an undue restriction on one's property rights.

One Common Approach: Regulate Everything

The courts have approved zoning ordinances, but that does not necessarily mean they are a good idea. In fact, zoning ordinances have a dark past. At their worst, these regulations have been known to be outright racist.⁹

At their best, they merely reflect the idea that the government knows better than landowners how to best use their land. Confidence in this perspective has led many local governments to be trigger-happy when it comes to zoning regulations.

The results of this enthusiastic approach to zoning has led local governments to engage in central planning and regulate everything from where people live, to how many people live there, to where business can be done, all under the guise of protecting the community.

The US Constitution protects property rights by guaranteeing that private property shall not be taken for public use without just compensation. Traditional takings involve the use of eminent domain where land is literally taken and just compensation is (usually) provided. However, there is another kind of taking called a regulatory

9 Wilson, Michael H. "The Racist History of Zoning Laws". May 21, 2019. <https://fee.org/articles/the-racist-history-of-zoning-laws/>

taking. This occurs when the government imposes regulations which effectively deprive the property owners of the utility and value of the property.¹⁰

In 2015, in a small, rural Utah town, Duane and Susan Munn took notice of a scenic, 80+ acre parcel of land that was available for sale. Despite not knowing how they might ultimately use it, they decided to purchase the land. Unbeknownst to these new land owners, a group of residents had organized themselves to change the local land-use ordinances, control how others could use their property, and prevent any future commercial development. The town's laws now effectively require the Munns to let their land sit idle as vacant open space — in a rural community surrounded by millions of acres of “public” lands.¹¹

Additionally, zoning ordinances will frequently include conditional uses — land uses which are allowed but only if certain conditions are met and approval is granted. While there are rare circumstances where perhaps conditional uses make sense, they should not be used as extensively as they typically are.

Ideally, activities should either be clearly problematic and thus prohibited, or they should be allowed. When you increase the number of instances where individual

assessments are required, you increase the risk for corruption by empowering government officials to control the fate of a person's property and thus the exercise of their rights.

When conditional use permits are required, it should not require herculean efforts to obtain the permit. The process should be clear and fair regardless of who is applying.

There will be cases (whether it be for a conditional use permit or a rezoning request) where specific people or entities come before you to request changes or exceptions to your zoning. This is a natural part of having a responsive local government — after all, every parcel of land was initially agricultural, and land uses have evolved repeatedly as population grows and new uses are needed. When reviewing zoning changes, ask yourself two questions.

First, am I treating this person fairly? Am I making a decision that I would make differently if it was someone else asking? Secondly, if exceptions are made, are there broader land use reforms that need to be instituted? Governments are quick to enact regulations but it is less common to see such restrictions reduced or repealed.

A Better Way: Let Issues Drive Your Zoning

The path to reasonable zoning ordinances begins by asking yourself, “Why?” Why regulate where people live? Why regulate how many people can live on an individual's property? Why regulate where businesses can be located?

10 Pilon, Roger. “Property Rights and the Constitution, Cato Handbook for Policymakers.” Cato Institute. 2017. <https://www.cato.org/cato-handbook-policymakers/cato-handbook-policy-makers-8th-edition-2017/property-rights-constitution>

11 Daniels, Josh. “The Fundamental Right to Use One's Own Property.” Libertas Institute. December 16, 2015. <https://libertas.org/policy-papers/property-rights.pdf>

Issues arising from actual threats to public health or safety warrant oversight and reasonable restrictions. Outside of that limited scope, the government should stay out and let people enjoy and exercise their property rights.

People sometimes argue that without zoning laws, neighborhoods would have a McDonald's pressed up next to homes and strip clubs next to their children's elementary school. While this may seem like an alarming possibility, consider the fact that it would not be a good business decision for McDonald's, or other businesses, to set up shop in a neighborhood if it would be perceived as a nuisance by everyone nearby. Further, there simply wouldn't be enough traffic to support such a business in a niche location. In other words, the free market will encourage a sort of natural planning. Scary hypotheticals are not a reason to have the government so involved.

While it is likely not possible for you to completely uproot your zoning ordinances, it's worthwhile to consider the alternatives. Houston, Texas, is famous for having no zoning restrictions, but that's somewhat of an oversimplification. Houston has no use restrictions, meaning no ordinances govern what can and cannot happen on a property. There is still planning and there are still regulations, particularly when it comes to matters of health and safety, but zoning does not govern property use.

If there are individuals who are passionate about land use, they can collaborate with other property owners to create land covenants. These covenants are typically written into the deed and are tied to the land. This approach requires unanimous consent from all the involved parties and does not apply the same broad restrictions to unsus-

pecting parties. This helps ensure that the majority is not imposing their will in the minority, as the only parties affected are those who gave actual consent.

There are all sorts of creative alternatives to zoning. The right approach to planning and land use begins when you ask yourself what harm you are protecting citizens from and if regulating property rights is the best way to do so.

Permitted and Conditional Uses

Human beings are endlessly creative, and there is no telling what they will come up with next. This is usually good news, especially when it comes to innovation, technology, and business. However, it does not feel like good news when it comes to your next door neighbor building a racetrack in their backyard. In short, people will try to do what they want, and that can cause a lot of problems.

One Common Approach: Whitelisting Activities

Predicting your constituents' next move and foreseeing any problems in the community is, unfortunately, impossible. In order to preempt any trouble this might cause, most cities have adopted a broad prohibition on everything. After detailing what is allowed and where, land use ordinances will include a final caveat which establishes that a use of land that is not expressly permitted within a zone is expressly prohibited therein.

From a government perspective, this is brilliant — nothing unexpected will legally happen without your prior

approval and oversight. From most other perspectives this is concerning and disturbing; we live in a country where people pride themselves on being free from government restrictions, and yet most cities prohibit residents from using their property in any way the government hasn't previously thought up and approved.

In most cases, you can get around these restrictions if you apply for a specific permit. The problem then lies in how much it costs in money and time to obtain such a permit. In some Utah cities, a conditional use permit can cost \$950 and \$150 for decision appeals.¹² Such expensive and burdensome processes are not an effective way to deter behavior.

This approach usually results in people sidestepping the required processes (and thus becoming criminals) or abandoning their desires altogether, which is quite unfortunate.

A Better Way: Presumption of Freedom

Unless there is a compelling threat to the health and safety of your constituents, they should be allowed to carry out their lives free of restriction. In short, local governments should narrowly target behavior they wish to outlaw or restrict, with a presumption of freedom that otherwise steers clear of restricting residents' conduct. This inverted approach better respects property rights while recognizing the government's limited and basic role.

When restrictions are necessary, they should be based on objective criteria that do not create broad regulations and

¹² Holladay, Utah § 3-35-070.

outlaw new activities not previously contemplated in law. If you require any approval or permitting, the processes should be affordable, reliable, and prompt.

Any restrictions on what people can do on their property should be specifically built to mitigate real and legitimate harms. In some cases, this means your legislative power will have to be responsive to (and respectful of) new ideas and developments. Ultimately, having a body of law that is forward-looking and freedom friendly is better than having a preemptive body of law that presumes anything unexpected is by default illegal.

Right to Rent

Dealing with a community of property owners who own and live in their homes is one thing. You face a whole new set of challenges and problems when people living within your jurisdiction are renting out their property to others on a short- or long-term basis.

One Common Approach: Owner-Occupied Only

Though it may not be in code, there are all sorts of ordinances that can signal to others that your community is designed primarily for individual families who want to own and live alone in their home. Ordinances often create scenarios in which communities discriminate against renters, outsiders, and those seeking creative and affordable housing.

Specifically, ordinances can create harmful effects in areas concerning the number and which groups of people

can live under one roof by restricting occupancy based on relation. For example, some cities limit occupancy of a home to a single family or a certain number of unrelated people. They do this by creating single-family dwelling zones and enacting restrictions on the amount of unrelated persons that can reside in a single family dwelling.

While almost certainly well intentioned, these laws can be harmful and increase housing costs. They may prevent students from having the ability to find the necessary number of roommates to be able to afford to live in Utah. Those hoping to rent their property may see their pool of potential renters drop and, as a result, their revenue suffer.

A Better Way: Respond to Harms

Property owners should be free to do what they peacefully want to with their property. That includes renting out that property to another person or group of people.

Whether a roommate is a brother or an unrelated person, that extra individual does not create a different impact on neighbors or government services merely because of the relationship to others in the home. Arbitrary restrictions such as these do not keep city ordinances within their proper scope nor do they adequately protect property rights.

Certainly, the concerns brought about by the notion of short-term rentals, renters, and unconventional residents can be legitimate — excessive noise, parking congestion, and unruly garbage can all threaten the peaceful use or the value of others' property — but those nuisances would be harmful regardless of who causes them. The restrictions

should, therefore, narrowly address direct harm, not activities that are, in some cases, perfectly harmless.

Lot Restrictions

Years ago, your locality likely had a specific feel to it. These characteristics brought many residents who were very committed and invested in the original feel and look of your community.

This can pose a problem: should you work to preserve certain characteristics in your community, using the law to prohibit changes that are different from “the way things have been”?

One Common Approach: Minimum Lot and Unit Sizes

In response to new development and housing demand, many localities have created minimum lot and unit sizes. These regulations create a barrier to entry in your community by only allowing those who can afford a certain size home or lot to join. While people are certainly free to own large homes and properties, they should also be free to build smaller or non-standard housing.

Some cities have arbitrarily mandated that lots may not be smaller than 20,000 square feet throughout most of their jurisdiction. Such broad zoning requirements undermine a property owner's right to use their property as they see fit.

A lot that is 18,000 square feet, for example, does not negatively impact anyone and should therefore be allowed.

A Better Way: Flexibility For Property Owners

Regulate as little as you possibly can. While there may be some regulations that make sense for a specific location or circumstance, requiring people to build a certain amount of square footage is not the way to achieve common-sense regulations. Any restrictions on lot or unit sizes should be designed in response to a threat of actual harm or concerns regarding the available infrastructure.

It is not the proper role of the government to apply arbitrary restrictions to its constituents' property that extend past reasonable boundaries. Restrictions that go so far to affect what people do in and to their homes are a clear overstepping of government control.

Your legislative efforts should be grounded in the idea that individuals have the right to peacefully use their property and that government should not arbitrarily or unnecessarily impede on this right, especially in ways that create barriers to entry for those with lower income or different desires.

Conclusion

Protecting property rights and mitigating nuisances can be difficult, but neither should be sacrificed for the sake of the other. Vaguely prohibiting broad categories of behavior in order to guarantee peace is not effective or principled governance. It should only be in rare circumstances that you have to regulate the use of private property, or activity which occurs on private property and does not impact others. Of course, the more difficult

question is how to measure impact on others. When doing this, we hope you'll think back to this chapter and be an advocate for the protection of property rights, ensuring that government restrictions are narrowly focused on actual harm, not preemptively restrictive in the hopes of preventing any potential harm that may or may not occur.

Here are the key takeaways:

- Property rights are a foundational right and worth protecting.
- The government is not the grantor of property rights.
- Any restriction on property rights should be narrowly tailored to guard against actual harm.
- While preemptive regulations might seem helpful, they can quickly become excessively restrictive.

Transparency

“The liberties of a people never were, nor ever will be, when the transactions of their rulers may be concealed from them.”

Patrick Henry

As an elected official, you represent and work for the people. Government entities should facilitate public participation as efficiently as possible, being open and transparent throughout the process. This can strengthen your effectiveness as a public servant, encourage collaboration between the government and individuals, and help you more accurately meet the needs of those you serve.

Throughout the political process, elected officials should hold themselves accountable to their constituents by promoting public oversight and transparency. Even appearing to be conspiring against residents can be the fastest way to lose the trust of the people you represent.

Residents in your community should be able to track, understand, and participate in your decision-making processes without difficulty. Being involved in the political process and staying current should be easy and convenient, with any technological or logistical hurdles cleared away to facilitate more participation. In return, you, as an elected official, will benefit from the knowledge and diverse perspectives provided by your constituents.

An effective public servant should constantly be seeking to learn from and understand their constituents' perspectives. Work to promote a culture that values open and honest dialogue and is fueled by involved and informed citizens. You should also understand that people are busy. Thus, being informed and involved should be as simple and convenient as possible in order for you, as an elected official, to most accurately represent your constituents.

Case Studies

Code Accessibility

Every local government creates and enforces a different body of local law. Because these rules and regulations heavily impact the lives of your neighbors and are subject to change, you are faced with a challenge: how can you ensure that they have access to a current and accurate version of the local law?

One Common Approach: A Maze of Outdated Documents

When Libertas Institute compiled data for the Freest Cities Project in 2015, some cities' ordinances were only accessible online in PDF format. Some chapters were even in a non-searchable image format while others, including the criminal code, were sometimes completely missing.

It's common for local governments to have unorganized, inaccurate, or unavailable bodies of code, but this can be extremely problematic for your constituents. Most people want to comply with state and local law, but when it is difficult to navigate or find, well-meaning citizens can unintentionally violate the law and thus become criminals.

A Better Way: Organized, Accurate, and Accessible

Keep your code up to date, searchable, and easily accessible. If your staff does not feel confident in their ability to

regularly publish code updates, consider using a reliable code publishing software such as Municode or Sterling Codifiers. Systems such as these can make maintaining a current version of your code more efficient, while increasing easy access for your constituents.

The responsibility is yours to maintain government transparency. It is neither appropriate nor effective to take legislative action and then fail to publish it or make it available to the general public. Your work will be more meaningful if you have a clear process by which the laws and ordinances you enact are made public.

Open and Public Meetings

State laws are in place to help facilitate and encourage government transparency. Through the Open and Public Meetings Act, all government meetings and decisions are legally required to be open and public. While you are legally required to comply with this law, it is also important to consider how you comply.

One Common Approach: Only the Letter of the Law

The Open and Public Meetings Act requires meetings to be open to the public, publicized ahead of time, among other requirements. It is certainly possible to meet all the legal requirements without putting in too much effort. You approach these laws the wrong way when you do the bare minimum of what is required to be compliant.

A Better Way: When in Doubt, Be Transparent

Elected officials have the important responsibility of providing their constituents with the opportunity to be informed, engaged, and involved. Constituents should be able to observe, audit, and contribute to the process.

While it is possible to meet all the legal requirements with relative ease, we implore you to go the extra mile. Make transparency your default.

This can be even more difficult as technological advances are integrated into your processes. Remember that the same standards of transparency should be applied when it comes to online and electronic communication.

The Open and Public Meetings Act should not be viewed as an obstacle to get around. It is a guideline that should point you in a direction of more transparency, accountability, and openness.

Whenever you encounter a gray area, assume it is best to be transparent.

Financial Transparency

We have included a chapter on taxes in which we will discuss the spending of money at length. For now, it's important to note that one of your biggest responsibilities will be the taking, management, and use of taxpayer money.

In addition to being as transparent as possible in your communications and meetings, you should work to be

a wise steward of public funds. Your constituents are compelled to fund the government; at a minimum, they should be able to follow where that money is going.

One Common Approach: If You Want It, Come And Find It

Financial transactions are almost always recorded somewhere. A combination of state law, federal law, best practices, and tradition basically guarantee that somewhere in the depths of the city files, the answer to any financial question can be found — it's just a matter of how difficult it is to find. In most cases, the answer is: extremely difficult.

When financial records are not openly available, any individual wishing to be informed will have to go through an arduous process to get their hands on the appropriate information.

At best, this will entail submitting multiple requests and sifting through documents. At worst, citizens could be tossed around to different administrative offices without ever finding the information they were looking for.

This is not an appropriate way to approach financial transparency.

Finally, even when financial information is released, it is sometimes done in a format that is inaccessible to or difficult to understand for the average taxpayer. Financial information should be communicated and tracked clearly and simply so that those who are paying the government can clearly observe and understand how it is using their money.

A Better Way: Spend Wisely And Publish Everything

Instead of placing the burden on your constituents to sift through and translate financial documents, ensure your staff publishes clear and comprehensive reports on your revenue and expenses. There are local governments that do a fantastic job at this and regularly put out understandable and all-inclusive reports. Work towards this goal. Such financial transparency encourages accountability and responsible spending.

The American Legislative Exchange Council writes on transparency and includes a list of all financial information that should be published.¹³ They include, among other things, all budgets, current and historic, graphs showing spending and revenue over time, a check register including all details of checks written, status of any audits, contract information, and all grants given to non-profit organizations.

As you become more and more familiar with your entity's finances, you will come to realize just how many expenditures a government makes. Make as much of this information as possible public, accessible, and understandable.

Conclusion

Transparency facilitates accountability and more respon-

sible governance. Regardless of your position on a particular issue, you should be open and honest throughout the process. You should not keep secrets from the public.

Be vigilant when it comes to legally mandated transparency, and be open when you are met with gray areas. Not only will transparency allow you to foster more trust with the public, it will also help you to avoid messy legal altercations.

Here are the key takeaways:

- Transparency and accountability go hand in hand.
- Open processes promote public involvement.
- Suspicious, secret, or inaccessible government information breeds public distrust.

¹³ American Legislative Exchange Council. "Transparency and Government Accountability Act." December 1, 2020 <https://www.alec.org/model-policy/transparency-and-government-accountability-act/>

Public Infrastructure

“Cities are more than the sum of their infrastructure.”

Rick Yancey

Governments should think responsibly about what essential services they offer and how they are funded. It's important to carefully consider what services your local government should provide and what services should be left to the private market. Before committing to provide and fund any services, think critically about whether or not it is a responsible and appropriate use of government resources.

At the end of the day, cities are enterprises set up for providing services that are considered public goods or that are frequently subject to a natural monopoly.

A natural monopoly is created when there are high infrastructural costs and similar barriers to entry that give the largest or first supplier an overwhelming advantage over competitors.

For example, once the first and most efficient road has been built to your house, you're likely going to use that road to get to and from your home. If someone were charging you for that use, they could charge whatever they want because building another competing road to your house would be difficult or impossible. As a result of this effect, it makes sense that a local government would provide this service at a low cost.

Another argument for government services is that public goods like roads, sewage systems, or parks suffer from a free rider problem. It is difficult, if not impossible, to keep people from benefiting from these services, even if they don't pay for them.

People benefit from having a sanitary society and a road system even if they are just visiting the town and don't contribute to the funding of those systems. Even if those systems were all privatized, people would still benefit

from them. When a service poses enough of a free rider problem, it might make sense that the government would provide that service.

There is a very niche corner of services that are arguably most efficiently provided by a local government. Beyond those very basic services, the private market will likely provide a better product at a lower cost than the government can. When your focus moves beyond basic and effective infrastructure, it has moved beyond the proper role of government.

Some might suggest that if the government can provide necessary infrastructure, they should provide any amenities requested by a majority of voters. Certain government services can be efficient and effective, but there are very few instances where it makes sense for the entirety of a community to be forced to fund a project that benefits a small minority of people. Furthermore, when services are provided via the free market, the quality increases and the price decreases. We'll talk more on that in the next chapter.

Below, you will find some insight on frequent issue areas you might address as a local official.

Case Studies

Project Funding

Most large infrastructure projects will require much more money than you have on hand in any given year. As a result, you will have to make some difficult decisions in order to fund these projects.

One Common Approach: An Endless Tax

In an effort to be fiscally responsible, some local governments choose to save up the necessary funds before commencing a big project. At first glance this may seem like a conservative option, but there are several underlying problems with this approach.

First, the method for generating these funds usually comes in the form of a tax. The problem with taxes is that while they are occasionally increased, they are very seldom reduced. Funding a large project with a tax increase often results in permanently increased taxes, even after the project is complete. Even in the case of some bonds, local governments have elected to continue collecting the same amount of money after the bond is paid off by increasing taxes.¹⁴

Another problem is that by charging taxpayers ahead of time for a project that is to be completed in the distant future, people are funding a service that they don't currently — and might not ever — benefit from. On top of that, if you indefinitely stash cash in an attempt to save for a large project, that money is losing value as it sits idle and inflation increases.

A Better Way: Smart Temporary Bonding

If rates are low and you can responsibly bond for large infrastructural projects, you should. Then, when that debt is paid off, retire the bond and relieve your constituents of the added financial burden.

¹⁴ Davidson, Lee. "Despite fuzzy claims, 53 Utah local governments are proposing property tax hikes." September 26, 2020. *The Salt Lake Tribune*.

This will allow projects to be paid for by those who are actually benefiting from them. This is especially prudent in light of the fact that government entities generally benefit from low interest rates.

Be sure not to treat the opportunity of a bond as a blank check. When borrowing money, you should be especially careful to make sure that your plans are frugal and narrowly applied. Find alternative ways to build that do not involve superfluous or unnecessary spending.

The Washington County School District, for example, opted to use lower cost tilt-up construction for their new projects.¹⁵ This creative approach allowed them to build lasting structures while reducing costs by up to 25 percent.

Growth

Utah has experienced record breaking levels of growth over the past few decades. As Utah grows, your jurisdiction will grow and you will have to invest in more infrastructure to facilitate that growth.

One Common Approach: 0 to 100

Growth can be exciting and it is easy to get swept up in that excitement. As you watch neighboring localities grow and expand you might be tempted to jump toward large scale developments and projects. As you manage growth, you must strike a delicate balance. You don't

¹⁵ "2018 Bond Info." Washington County School District. 2018. <https://www.washk12.org/district/bond>

want to put the cart before the horse and expand your services and subsequent spending too quickly.

However, you also don't want to be caught off guard by growth and be unprepared to meet the needs of an expanded population.

Being overzealous in your reaction to growth can lead to broad spending which may seem like a good idea in the moment but which leaves you with massive obligations down the road. Spending large amounts of money might seem justified in the moment and in the context of impending growth, but remember that that is not the only context in which that spending matters.

Spending, especially for infrastructure, should be considered within the context of all potential upkeep and maintenance—future obligations and impacts that this decision produces.

On the other hand, growth should not be feared or used as an excuse to restrict or deny land owners or developers. Growth is good and likely inevitable. Trying to avoid growth by undermining property rights or imposing intense restrictions is unfair to your constituents and those interested in joining your community.

A Better Way: Incremental Growth

Your growth should be able to pay for itself. In order to achieve this, growth will need to be incremental. As residents and businesses join your community, the increase in tax revenue should fund the necessary increase in infrastructure and services. A steady process, rather than a series of significant but infrequent steps, can be more

easily managed without straining existing taxpayers or eliciting political battles.

Your growth should be financially responsible and sustainable. This means that you ought to take into account not just initial spending but also the cost of maintenance and any other potential obligations or liabilities that are being created.

Conclusion

Your focus should be on doing the basics well. Treat taxpayer revenue with more care and consideration than you would your own money. After all, it is not yours. Those funds should go toward the most efficient approaches to the basic services that benefit the public at large. Try not to get caught up in the extravagant projects that some governments fund; it is more important to have well-maintained roads than to have a shiny new stadium.

Here are the key takeaways:

- Focus on doing the basics (roads, water, power, sewer) well.
- Do not provide the service if it could be done better by the private market.

Government Services and the Private Market

“Beware the greedy hand of government thrusting itself into every corner and crevice of industry.”

Thomas Paine

We've already discussed the basic infrastructure services that local governments facilitate (roads, water, power, sewer). However, many local governments go far beyond that in the services they offer. Some local governments own and run golf courses, water parks, gyms, and other non-essential services. This goes a step beyond the proper role of government.

Put simply, the government should not offer non-essential services the private market could otherwise fulfill. A government's purpose with respect to the market should be to simply enforce a level playing field. You should not be competing with businesses or unfairly restricting a particular business or industry in any way.

This is not an easy ideal to strive for. Oftentimes, people want the government to provide things that are not essential. It makes sense that they would. If the government provides something, it is heavily subsidized and, therefore, more affordable to consumers.

This issue can be even more confusing when you consider the precedent for local governments providing non-essential services. For example, many cities have tax-funded recreation centers.

These facilities and the services they provide are not essential, and if they weren't so traditionally provided by the government, they could certainly be provided privately. (Of course, most or all of these services are indeed provided by private businesses.)

When the government provides non-essential services, it often benefits a disproportionate or lopsided group of citizens. If, for example, taxpayers are required to fund

a water park, it only benefits those who are interested in swimming. The rest of the population is subsidizing this activity with their tax dollars. On top of that, you are competing with all other businesses that do not have the benefit of subsidizing their ventures with taxpayer dollars.

Public enterprises can also benefit by enjoying legal immunity, avoiding business taxes, and not necessarily having to respond to market signals when it comes to prices, services, or even their continued existence. This provides a tremendous advantage over similar private businesses and creates the illusion of effectively outperforming a private enterprise.

Government's involvement in business enterprises stifles growth and deters investment by private parties who do not wish to compete against a taxpayer-funded enterprise.

When it comes to your entity's relationship with the private market, there are difficult questions to answer. As you work to answer them in a fair and meaningful way, consider these important questions.

How many people in your community stand to benefit from a proposed enterprise? Several obvious and outspoken members likely benefit from it, but when it comes to the population at large, what does the benefit look like? Is there a monopoly created? Who are we competing with by investing in this enterprise?

The answers to these questions should guide your decision on whether or not it is appropriate for you to be offering a particular service.

Below, you will find discussion on some specific issues and circumstances when it comes to the government and the private market.

Case Studies

Government Enterprises

When it comes to certain amenities, your community might not be satisfied with the options provided (or not provided) by the private market. These circumstances can pose a difficult question — is it appropriate to create a taxpayer funded enterprise?

One Common Approach: The Government Is Here to Help

Governments often provide unnecessary services like golf courses and recreation facilities. These are often done in response to public demand or priorities of elected officials, but interest does not justify government involvement.

We would recommend you limit the resources allocated to these services or eliminate them altogether. Certainly, when a service is so niche that it only really benefits a small portion of community members, it should not be funded by the taxpayers at large.

Golf courses, water parks, and gymnasiums are among those services so expensive and so specific that they are better left to the private sector.

Usually, these investments struggle to earn a profit at all and are subsidized by taxpayer dollars. Finances aside, providing such services is an interference in the private market. Such a project uses general funds to make everyone pay for a service that only benefits the few who use it.

Furthermore, it disincentivizes any private person or group from providing any of these services that would increase rather than drain tax revenue.

A Better Way: Support Positive Private Projects

If a service is so important to a community that they would have the government provide it, that same service should be important enough to be sponsored and supported by private entities or lucrative enough to attract or instigate a local business. If demand truly does exist, then this market opportunity can be filled by a private party should the economics truly work out to support the business endeavor.

Before investing in any non-essential services you should, at a minimum, do the necessary research to ensure that that service is not already being provided by a private organization.

If the service is not already provided, consider whether or not it is wise for the government to be investing in a service that no one else has determined worthwhile to provide. If the service is already provided, focus your efforts on supporting the private entity offering that service. You should avoid duplicating any services already offered by the private sector.

Instead of competing with private businesses, you should work to create a business friendly environment. You can

do this by creating clear processes, limiting burdensome restrictions or requirements, and being aware of what non-essential services are already provided by the private market.

For example, Highland was considering creating a city sponsored dance class. However, when they discovered that there was already a dance studio within Highland offering the same service, they decided against funding a competing service.

In Eagle Mountain, the community was considering creating a government funded arts council, but instead created a public-private partnership backed by local businesses and other entities invested in the arts.

Economic Incentives

As your constituency grows, you'll likely feel more pressure to attract businesses which will, in turn, bring jobs, expand the tax base, and strengthen the economy. This goal can present an important question: what are appropriate ways to attract business and development?

One Common Approach: Losing Propositions

Many local officials approach this issue by offering economic incentives to businesses willing to come to their locality. These economic incentives are usually (though not always) post-performance tax breaks or rebates. The problem is, these programs are poor policy and often do more harm than good. Businesses can play governments off each other to get the best package possible, and it is

usually to the detriment of the local governments. While these incentives are often well intentioned, they do not yield an impressive return on your investment.

Further, offering incentives to some businesses naturally creates an unfair playing field between the favored recipients and their competitors. For example, if a company obtains a tax rebate to locate in your city, they can pass along that reduction in expenses to their employees by way of higher salaries, which means that their competitors will likely lose employees to this company because it can pay more. This hurts your constituents and local business owners who have invested in the community.

A Better Way: Attractive Business Environment

When it comes to taxes and finances, all businesses and individuals should be treated equally. In order to accomplish this, you should minimize or eliminate the economic incentives that you grant businesses in an attempt to win them over. Instead, attract people and businesses by creating systems and institutions that are fair and reliable, with low taxes and regulations.

In 2016, Facebook was considering building a \$2.5 billion data center in West Jordan. The problem was, they were considering building that data center in several locations, which allowed them to ask for exorbitant amounts of money in economic incentives — the deal that was being negotiated included nearly \$200 million in tax incentives. Ultimately, Facebook decided to build in New Mexico; Utah was not selected. This was, in part, due to opposition from the Salt Lake County Mayor at

the time, Ben McAdams. He recognized that this was not a good deal for taxpayers in Utah, and he opposed it.¹⁶

Instead of attracting businesses with economic incentives that create unfairness, attract people and businesses by creating systems and institutions that are fair and reliable. Local government should be focused on doing the basics as best they can. If you have clear permitting processes, friendly zoning, an open and clear political process, and low taxes and regulations, businesses will naturally be attracted to your community. That's something that will benefit the government, your constituents, and businesses in the long term.

Business Regulations

In order to oversee business activity and protect public health and safety, governments impose a number of regulations. The unseen problem inherent in this process is that burdensome regulations can stifle innovation, driving out business and development that would otherwise benefit the community. The question is, how do you balance these competing concerns, and how do you know what level of regulation is appropriate?

One Common Approach: Burdensome Regulations

There are a plethora of ways in which local governments can regulate business practices and make the process more difficult. They can institute burdensome licensing

16 Gehrke, Robert. "West Jordan blames Ben McAdams for losing out on Facebook data center." September 15, 2016. *The Salt Lake Tribune*.

requirements that make it difficult for people to start businesses or find employees and create barriers to entry by requiring competing businesses to sign off on new competition. They can regulate when and where business can happen by prohibiting business activity on certain days of the week or in certain geographic areas. The list goes on.

Regulations should always be built to protect the public health and safety of your community. Any regulation that does not contribute to this goal is unnecessary. Regulations not directly addressing a specific harm should be done away with.

A Better Way: Minimize Your Involvement in the Free Market

Regulations should be simple and not burdensome for business owners. When regulating, think of businesses as your friend and maintain that perspective until they give you reason not to by way of harmful activity that deserves narrow attention and regulation.

In response to that idea, one might suggest that if you do not work to preempt harm, the damage will be extreme or maybe irreversible. It is true that if you take a more conservative approach to regulation, you might have to retroactively respond to some harm. However, the more concerning risk rests on the side of over-eager regulation.

If you choose to extensively regulate businesses, you risk not only regulating harm but also regulating ideas and innovation — peaceful activity that will find a home in a more favorable environment with fewer regulations.

If you feel that, for some reason, the government must interfere with the private market, make that interference as brief and narrowly focused as possible. Permit requirements and licensing processes should be clear and straightforward. Government should be friendly to businesses and innovation, and only put burdens on those who are bad actors.

Conclusion

Government entities should not be competing with the private market. This practice is unfair to both businesses and taxpayers. It creates inequitable competition that is subsidized by taxpayers but does not evenly benefit the population. Not to mention, government entities, in general, are not able to offer the high-quality services that a competitive market produces.

You should interfere with the private sector as little as possible. When your involvement is necessary, it should be minimal and simple. Your processes need to be business-friendly. That is how you will attract and cultivate the most successful businesses for your constituents and for your economy.

As you work to limit your interference in the free market, keep these takeaways in mind:

- Local governments should focus on facilitating basic infrastructure well.
- Let the market facilitate extraneous amenities.
- If a private entity could do a better job, consider privatizing that service.

- Economic incentives unfairly distribute the tax burden.
- Regulations should address specific, identifiable harms, not what-ifs and personal preferences.

Fees

“A wise and frugal government, which shall leave men free to regulate their own pursuits of industry and improvement, and shall not take from the mouth of labor the bread it has earned — this is the sum of good government.”

Thomas Jefferson

Fees are a user-based approach to payment for services that cover a specific service, or the related costs of that service, which is utilized by the individual being charged the fee. When charging a fee, the use of the service must be measurable so that the charges accurately reflect an individual's actual use.

For example, you may charge a fee for water or electricity based on how much is used in each household. Or perhaps you decide to fund the privately-contracted waste collection by charging a fee per bin, calculated by the actual cost of what it takes to provide garbage service.

The common thread in these situations is that the fee amount is measurable and tied to the use (or non-use) of the related service. Fees should not be used as creative ways to raise revenue or bypass processes to increase tax rates.

Fees are distinct from taxes. General taxation through property and sales taxes contribute to your general fund, which can be used to fund the various services required to run a local government. These services tend to provide a general benefit to the residents of your jurisdiction and those who live in or pass through your community.

For example, it is very difficult to quantify the specific benefit of public safety and fire protection for each resident. Consequently, these services are funded through general taxation. While fees are specific to a measurable activity some local governments have instituted fees to help make ends meet when it comes to the cost of providing general services.

This tendency is understandable. Utah's Truth in Taxation process can make it difficult to raise taxes without drawing the ire of your community. This can lead some officials to seek out new avenues of revenue generation that are politically easier and quicker to enact.

With so many demands on your budget, it can be incredibly tempting to misuse fees, especially since they appear to be an equitable solution.

However, courts have determined again and again that there is a distinct difference between a fee and a tax, and that in the case of the latter, the Truth in Taxation process must be followed. Your residents have a constitutional right to be protected from improper fees.

The case of *V-1 Oil Co. v. Utah State Tax Commission* (1996), heard in the Utah Supreme Court, established some of the earliest precedents on the difference between a fee and a tax.

Specifically, the ruling determined that “to be a legitimate fee for service, the amount charged must bear a reasonable relationship to the services provided, the benefits received, or a need created by those who must actually pay the fee. This requirement is intended to prevent a fee from being used to generate excessive revenues and becoming indistinguishable from a tax.”¹⁷

Enacting fees requires being precise and should be reserved for funding specific and measurable services, not as a way to raise revenue, regardless of the transparency and accountability measures that are set up.

17 *V-1 Oil Co. v. Utah State Tax Comm.* October 29, 1996. Justia No. 950156.

Avoid looking to the utility bill as a means to solve revenue issues.

Case Studies

Transportation Funding

Many counties and cities in Utah are facing a problem: roads are wearing out and need to be replaced. This is an expensive project, and raising the funds for such a project creates a challenge. The Utah Legislature has diminished the amount of funds available to local governments by moving away from exclusively funding roads with gas taxes and instead relying on sales tax earmarks.

A long-term solution is required to move back to a more user-funded model that would bring more revenue to local entities, such as a road usage charge or vehicle miles-traveled type of program.

In the meantime, some cities have pursued the idea of adding a fee for transportation onto the utility bill in order to raise revenues for transportation expenses and projects. This is constitutionally and legally problematic. Those who have pursued this policy have known these risks from the beginning and proceeded with eyes wide open down this risky path.

One Common Approach: Risk the Lawsuit

Pleasant Grove is among several cities that have instituted a Transportation Utility Fee (TUF) to address their

infrastructure needs. At first glance, it doesn't appear to be a poor policy to provide a service like roads equitably. However, it is not a service where the use can actually be measured, and thus it is not a service that can be funded by a fee. The Fourth District Court supported this assertion when they ruled on a lawsuit organized by Libertas Institute over the adoption of a (TUF)¹⁸.

The court elaborated that, “generally speaking, a tax raises revenue for general governmental purposes, while a fee raises revenue either to compensate the government for the provision of a specific service or benefit to the one paying the fee or to defray the government’s costs of regulating and policing a business or activity engaged in by the one paying the fee.”¹⁹

The court determined that the TUF does not qualify as a regulatory fee. However, many have considered whether it is not a service fee since the money is going exclusively toward a service provided by residents. When this issue was brought to the courts, it was decided that the TUF does not qualify as a service fee because the benefit is not isolated to the person paying the fee.

It is extremely difficult to measure who uses the roads and how much, and so the same fee would be charged to the elderly widow who doesn't own a car as the family of ten with five vehicles. Additionally, as the court pointed out, this benefit is also extended to non-residents who use the city's road system without paying anything at all.

¹⁸ This decision has been appealed and is currently being considered by the Utah Supreme Court (as of July 2021).

¹⁹ *Utah Sage Inc. v. Pleasant Grove City*. (4th District Court of Utah County, Utah February 12, 2020), No. 190300164.

A Better Way: Embrace Truth in Taxation

The fact is that roads are going to need to be funded out of your general fund made up of collected taxes and fees. This means that the only way to increase the funds for your roads is to increase your certified tax rate or reallocate existing funds. This may seem difficult, but the discussion with your residents needs to be had.

The dialogue between you and your citizens through the Truth-in-Taxation process is not designed to be a difficult one. The main purpose behind Truth-in-Taxation was to provide a level of transparency, and in fact, it provides you with a better opportunity to explain your government's needs, such as funding transportation in your area.

When Truth-in-Taxation is done in the sunlight and citizens are provided with enough data to make them feel an increase to the certified tax rate is justified, the process need not be so difficult. The dialogue between you and your citizens for the need for a certified tax increase is a key tenet of Utah's unique property tax law.

This conversation makes Truth-in-Taxation the model for the country, ensuring that government services can be provided with necessary funding, while still maintaining taxpayer engagement and ensuring rates don't rise exponentially or automatically.

That being said, going through “small” increases to the certified tax rate each and every year, as some entities do, makes the process much more dark. Doing this hides the cost of government to the taxpayer, and makes it much more difficult in the future to justify a larger increase

to pay for major maintenance of roads or an increase in salaries to public safety, as an example.

Costs do generally rise, which is why it is appropriate to go through raising the certified tax rate every 5 -8 years. Showing citizens the cost of inflation in road maintenance or other city services will help your citizens understand more clearly why the increase is necessary.

Utility Fees

In your work as an elected official, you will likely be involved in the provision of utilities to your constituents. This could include anything from garbage services to water and electricity. The nature of these services sometimes make them an appropriate candidate for a fee.

One Common Approach: Adding Line Items to the Utility Bill

Utility fees should not contribute to your general fund. They are not another form of taxation, nor are excess revenues “profit” that should be transferred to the city. They are specific and user based, and where too much is collected, rates should be lowered to match the actual cost of the service.

You should never overcharge for services and allocate the additional funds towards an unrelated project. Some cities have begun using the utility bill not just for actual utilities, but to raise funds to pay for things like public safety and debt service on broadband infrastructure.

These are inappropriate ways of using the utility bill and when combined with municipal enterprise fund transfers, leaves transparency and accountability to residents lacking.

A Better Way: Keep It Organized

Utility fees must be reasonable. A reasonable utility fee is one in which the cost of the service for constituents is at or near the exact amount it costs to provide that service. When funding utilities by means of a fee, you should only charge what it costs to facilitate that service and ensure those funds go directly towards dispensing that utility.

Better yet, make your process clear and simple so that your constituents know that the fees they pay are directly funding the service they are paying for. Keep an organized ledger that tracks the funds that come in and go out for a specific service. Be proactive in helping the public see that this is being managed responsibly.

Charging only what a utility costs a constituent, and no more, is not just courteous — in many cases it’s the law. This establishes that fees that exceed actual costs of utilities are unlawful. Do not attempt to create unlawful taxation by using a fee.

Impact Fees

As Utah grows, so will your locality. If there is land available within your jurisdiction, you will find many people interested in developing that land to build more housing and commercial real estate. The problem is, development can constitute a burden on your current infrastructure.

In Utah, you can solve this problem by charging impact fees.

One Common Approach: Impact Fees as a Barrier to Entry

Advocates for impact fees will argue that without such fees, current residents and taxpayers would unfairly shoulder the burden of paying for infrastructure required by new residents who are not yet taxpayers contributing to the general fund. This is a legitimate concern, but in an attempt to protect current residents, some local governments unfairly shift the burden of infrastructure funding (which would benefit both new and current residents) to the developer. A lopsided shift in either direction is inappropriate; to the extent possible, as the law requires, fees should be paid for by those who specifically benefit.

Impact fees should not be treated as yet another form of revenue generation. Charging impact fees for obscure services or facilities that are not explicitly laid out in the state statute governing impact fees is not legal. Likewise, impact fees must go directly toward the cause for which they were collected and calculated. Impact fees are not a tax and should not be used as a tax.

A Better Way: Impact Fees for Specific Services

Impact fees can be implemented appropriately when they are imposed in good faith and according to state statute. Developers are not trying to ruin your life. They are trying to create opportunities for future community members.

You should work with them in a collaborative effort to create the best community possible, and not see them as an easier source of revenue to benefit existing taxpayers.

When it comes to charging impact fees, the right way to go about it is outlined in Utah's Impact Fees Act.²⁰ The Act establishes that impact fees may be charged for any of the following services which have a life expectancy of 10 or more years: water systems and water rights, roads, wastewater systems, stormwater control systems, parks, municipal power facilities and public safety facilities.

Impact fees were created to finance growth and may not be used for routine maintenance on pre-existing infrastructure. Like all other fees, impact fees may only be used toward the specific service for which they were collected.

Conclusion

Managing your local government funding is one of the most important jobs you have. To this end, specific processes have been set in place governing fees and taxes. Confusing these two undermines the delicate (and controversial!) processes that citizens rely on to ensure their tax dollars are used appropriately. Misusing fees will never end well for you or your constituents.

As you work to ensure that your fees are appropriately assessed and allocated, keep in mind these key takeaways:

20 U.C.A § 11-36A-102(7).

- Fees are very different from taxes.
- A fee is user-based and funds a service that can be measured.
- The money collected from a fee should directly fund the service for which it is collected.

Law Enforcement

“Equal laws protecting equal rights: the best guarantee of loyalty and love of country.”

James Madison

Law enforcement exists to keep the peace. It's no secret they have a tough job to prioritize public safety while also upholding individuals' constitutional rights. They must be fair and objective to all people without favoring or unfairly targeting specific individuals.

Their efforts should be focused on a clear and narrow purpose, without regard for generating revenue or asserting the dominance of political power. And most of them are doing their best to accomplish this goal every single day – but they need your support.

Much of your influence on law enforcement will come as you ensure that the ordinances and regulations they are enforcing are reasonable and legitimate. Criminalizing insignificant infractions can lead to unnecessary altercations.

In creating any new law, your goal should be to minimize the unnecessary interactions between private residents and law enforcement. You can do this by thoughtfully enacting law only when it furthers the goal of protecting the health and safety of your community. A review of existing law that could be overly punitive is also in order.

The balance between too little and too much law enforcement can be high-stakes and difficult to strike. Law enforcement can serve as an effective preemptive attack on crime and harm.

You might be thinking: if it is possible to stop harm before it happens, isn't that a great option? This is a legitimate question. Before you commit to that strategy, though, consider that, as technology develops, the

opportunities to infringe on freedom in order to preempt harm will increase exponentially.

With no principles guiding what law enforcement can and cannot do, there are no limits. We recommend you focus your law enforcement efforts on activities that have a direct and causal relationship to real and articulable harms.

In response to this proposition, many might assert that having a proactive, predictive, and involved law enforcement agency is worth any associated costs — the argument being that the benefits of prevented harm and crime far outweigh any potential infringements on freedom.

This might be a compelling case, depending on the nature of your locality. In making this determination, please consider two questions.

First, do your law enforcement efforts unfairly target a group or person? Would your efforts be fair if they were applied to your entire constituency?

Secondly, what kind of issues are you targeting and focusing on? If your law enforcement officers are getting involved in disputes over the state of someone's lawn, for example, you might want to reconsider the principles governing that involvement.

Case Studies

Fines and Fees

When it comes to law enforcement, there are a lot of excuses to charge people with fines and fees.

On the one hand, there are administrative costs that must be met. On the other hand, you want to deter people from violating the law. But be careful about what money you charge people for violations.

One Common Approach: Ticketing as Revenue Generation

In many cases, local governments will collect massive amounts of money through ticketing or other fines and fees and use it as a source of funding for general purposes.

Law enforcement should not be used to generate revenue for the city. Where fines and fees are put in place, they should be reasonable and directly related to a violation of law or cost to the city.

Government agents should not be looking for an excuse to fine people in order to help fund the government or increase their agency's budget.

Furthermore, fines and fees should not balloon to unreasonable amounts that create an undue burden on your residents. If certain violations are so frequent that the subsequent fines make up large portions of a govern-

ment's budget, consider taking a different, and possibly more effective, approach to the issue or, if doing so is not a problem, amending your local ordinances.

A Better Way: Lowering the Burden of Fines and Fees

Make your fines and fees reasonable. While they can serve an important purpose, you should be careful not to let fines or fees become excessively burdensome. This will cultivate negative relationships between your constituents and law enforcement, and it will also likely violate state statute.

Utah law specifies that “the governing body of a 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.” The maximum class B misdemeanor fine is \$1,000.²¹

Utah statute also specifies that “a municipality may not issue more than one infraction within a 14-day time period for a violation . . . that is ongoing.”

Your ability to fine individuals is capped at \$1,000. For an ongoing violation, you may not issue a fine more than once every two weeks. In most cases, a \$1,000 fine every 14 days will be excessive. Your monetary penalties should be as minimal as you can possibly make them.

You may even be able to work with the justice court judges to allow community service in lieu of a fine. While this option is allowed for in state code, it's not

²¹ U.C.A § 10-3-703.

being proactively offered so many people just don't know about it. Innovative alternatives like this will help those who struggle the most and increase individuals access to justice on a local level.

Ordinance Enforcement

While it is best to limit invasive interactions between law enforcement and your constituents, there are some cases in which an interaction is unavoidable.

One Common Approach: Overcriminalization

Unnecessary and problematic interactions often arise as a result of criminalizing benign activities. We saw this happen several years ago when a widowed 70-year-old grandmother couldn't afford to pay for the water required to keep her lawn green.

When a police officer showed up to write her a ticket for the dead lawn, she refused to provide her name and fully comply. The woman was arrested and taken to jail. Later, the charges were dropped and the woman was released.

When dealing with things like aesthetic practice or personal preferences, it's best to have as little law enforcement involvement as possible. The best way to do that is to ultimately have as little government involvement as possible, so that law enforcement officers are not troubled with, nor troubling residents with, minor issues best handled outside of the force of law.

A Better Way: Foster Good Relationships

If an activity is not causing anyone harm, perhaps reconsider any heavy-handed enforcement on the matter or even reform the regulations. In general, work to cultivate a positive working relationship between citizens and law enforcement personnel.

Before Lehi Police Chief Chad Smith retired in 2014, Lehi patrol cars were decorated with the motto "fostering public trust."

More importantly though, the police department at the time worked hard to reflect that mission in their work. You should foster public trust and position law enforcement efforts to build and protect the community.

Use of Force

Law enforcement personnel are faced with difficult and sometimes life-threatening situations.

This creates high-pressure situations where, often, it seems the only way to respond is with force.

Remember, this is the force of the government and should be reserved for rare situations.

One Common Approach: Unnecessary Escalation of Force

Police officers support communities and avoid further escalating potentially harmful situations. However, in many cases, this has proven difficult, and the results can be fatal.

In the summer of 2020, protests broke out across the United States. Protesters focused on issues related to police brutality raised by the death of George Floyd. In many cases, these protests included actual destruction of property. Where that was the case, it made sense that police officers stepped in to intervene.

In some cases, however, protesters peacefully sought reform regarding law enforcement's use of force and were met with the same outrageous force they hoped to prevent. When officers respond with force to those who were peaceful prior to their arrival, they escalate the situation.

Too often, police are quick to use unreasonable force in situations that do not call for such actions or could be resolved in a more constructive way. This not only has the potential to spark nationwide outrage, it can also cause injury and even death for both officers and civilians.

Law enforcement officers have been tasked with protecting our communities. You should help equip them with the tools and perspectives necessary to do this without using unnecessary force.

A Better Way: Nurture a Culture of De-Escalation

Instead of meeting all situations with force, law enforcement personnel should be trained in more extensive and constructive strategies. They should be prepared to de-escalate situations and handle mental illness.

This is certainly not easy. But do your part to work towards a more just, effective, and positive law enforcement process.

You can be a leader on this issue by working with the police department to review what de-escalation practices are used, how they compare to other agencies, and what training is required of officers to ensure that an excessive use of force by officers does not happen in your community.

Doing the work on the front end will help ensure no problematic outcomes occur on the backend.

Conclusion

Your law enforcement effort should be specific and precise, it should mitigate harm without restricting freedoms. Using law enforcement to make money or to prove a point is inappropriate.

For many people, interactions with law enforcement will be their only interaction with local government. We hope that none of your policies will make people feel bullied or singled out.

As you pursue the goal of keeping the peace in your community, keep these key takeaways in mind:

- Law enforcement efforts should be narrowly tailored to keep the peace.
- Law enforcement should not function as a source of revenue generation.
- Eliminate unnecessary interactions between individuals and enforcement personnel.
- Law enforcement efforts that are too proactive and predictive can constitute a threat to justice.

Taxes

*“In this world nothing can be said to be certain,
except death and taxes.”*

Benjamin Franklin

When collecting money from your constituents, if that bill is not a user fee based on measurable use, it is general taxation. General taxation raises revenue for community costs, which cannot be attributed to a single user or beneficiary.

The majority of government revenue will likely come from general taxation. General taxation primarily comes through the sales tax, income tax (at the state and federal level), and property tax.

The necessary funding for government services should be fairly predictable. It is good practice to have a stable budget that doesn't vary wildly from year to year. As a result, you will not want your tax revenue to fluctuate wildly either.

Taxes should rely on the least volatile revenue sources. Property taxes are a good example of a stable revenue source.

Taxes should have the lowest possible rates spread across the broadest base. This way, all payers are minimally impacted. If you are not already aware, your constituency will likely inform you of the burden that taxes impose on them. When possible, you should minimize that burden.

We understand that taxes are necessary. In even the most conservative cities across America, citizens will expect certain services and infrastructure from their government — roads, water, and schools, to name a few. Those services cost money. As a result, you are constantly engaged in a balancing act as you work to provide basic necessities funded by reasonable taxes.

The Utah Taxpayers Association has laid out some helpful criteria that should be considered when it comes to new taxes and tax policies.²²

Consider their questions below:

- Does the policy increase the overall tax burden borne by Utahns?
- Does the policy unfairly shift taxes from one group of taxpayers to another?
- Does the policy weaken important protections for taxpayers, i.e, Truth in Taxation?
- Does the policy place an industry, or the State of Utah, at a competitive disadvantage?
- Does the policy threaten tax rate uniformity and consistency locality to locality, state to state?
- Does the policy require taxpayers and businesses to track new or increased information to comply with reporting requirements?
- Does the policy represent an unfunded mandate to businesses which will likely increase their costs, i.e., health insurance mandates?
- Does the policy use the increased revenues for purposes which do not benefit those who pay the tax?
- Does the policy result in unnecessary governmental growth?

²² Utah Taxpayers Alliance. "Criteria for Evaluating Legislation." n.d. <https://utahtaxpayers.org/about/criteria/>

Case Studies

Truth in Taxation

In order to hold local governments accountable for tax increases, Utah has a Truth in Taxation process. This requires local governments to hold public hearings whenever they are seeking to increase the tax rate. In addition to holding local governments accountable, the Truth in Taxation process also allows constituents to be heard and made aware when it comes to any tax increases.

This process can make raising the tax rate difficult, even if it is simply to keep up with inflation. Residents appearing at required hearings are not likely to support a tax increase.

Elected officials may shy away from raising taxes because of this difficult, yet required process. Simply opting out of raising property taxes is likely untenable; especially if the alternative is seeking out creative, yet questionable, methods of raising funds (such as the implementation of illegal utility fees).

Looking for ways to streamline, create efficiencies, cut bloat, and avoid providing non-essential services are just a few of the ways to initially avoid raising taxes. But if it is necessary, raising taxes will still likely be unpopular.

Regardless, help your constituents understand your decisions and hold you accountable for those decisions.

One Common Approach: Truth in Taxation as an Obstacle to Avoid

Local governments often attempt to find controversial ways to work around Truth in Taxation. This may be done out of fear of approaching citizens about tax increases.

Finding controversial ways to skirt Truth in Taxation can give you a disingenuous reputation. This may create political repercussions, as your constituents rely on this program for government transparency regarding their taxes.

Avoiding raising property taxes for long periods of time is also likely to be poor policy. Generally local governments should be analyzing every 5-7 years if a property tax increase is necessary to recapture inflation.

It is not a hard and fast rule that you must raise the property tax rate, but future elected officials will thank you if you avoid putting your city or county in the situation where a massive property tax increase appears to be needed after a period of 25+ years with no inflation increases.

A Better Way: Education and Collaboration

Truth in Taxation is not a law that should be avoided out of a fear that your constituents will be unhappy. Instead, you should work to educate constituents about the process of Truth in Taxation and the need for the occasional tax increase.

Citizens expect a lot from elected officials, and you need to help them understand that the services they expect cost money. Educating citizens about this policy, instead of looking for loopholes, will create a more effective process.

In addition, by educating citizens about this policy, you can demonstrate to them that Truth in Taxation enables you and other legislators to be transparent in policy.

Help your constituents understand, and appreciate, that Truth in Taxation allows citizens to actively participate in local policy by giving a forum to their concerns and beliefs. Education about how this initiative works, as well as its benefits, will allow you to face Truth in Taxation head on.

Eroding the Tax Base

Taxes should be fairly and neutrally applied. Tax policy should avoid tax-shifting effects. Tax breaks or tax incentives for property taxpayers can be designed in a way to avoid shifting the burden to other taxpayers.

One Common Approach: Shift the Burden

A tax-shifting effect occurs when a policy unfairly distributes the tax burden. For example, economic incentives can erode the tax base over time if there is no return on investment that produces proven greater tax revenues for local entities. If economic incentives are not well planned and carefully considered, it can quickly become difficult to provide essential services that are funded by

these taxes and force local governments to raise taxes to cover a shortfall that can be created by being too generous.

When providing these types of incentives, the “but for” argument must be considered. If an area is likely to be developed or redeveloped without the need for incentives, then governments need not provide any taxpayer dollars to spur development in an area.

In addition, the type of development must also be considered. Many entities will provide incentives to retail in order to gain a small increase in the sales tax base. Generally, it is appropriate to stay away from providing tax increment financing unless a major employer with high-paying jobs is looking to relocate or expand within your boundary.

At the end of the day, the money must come from somewhere. The tax dollars you give away through incentives will have to be made up by the taxes paid by everyone else, if policies are not in place that provide the entity an opportunity to recoup the cost. Sound policies that protect all taxpayers when it comes to incentives or tax breaks must be a priority.

A Better Way: Broad Base and Low Rates

When implementing policies that may create a tax shift, always consider whether the policy generates revenue using conservative rates across a broad base.

By applying a tax rate across a large group of people, the rate can be lowered, as opposed to a small group of tax-

payers paying a much higher share. This is a much more equitable approach to taxation.

This applies to all types of taxes, including sales and property.

Conclusion

The responsibility to collect and allocate tax revenue is one of your most important responsibilities. The money you are dealing with is not yours. It was paid by your constituents in exchange for basic services they expect. Taxes should be drawn from the least volatile source of revenue and should contribute to services that benefit the community broadly.

From start to finish, the tax process should be transparent, and taxes should be as low as possible to fund only essential government infrastructure and services. Embrace the Truth in Taxation system — it was created to foster community involvement and accountable spending.

Here are the key takeaways:

- Taxes are different from fees.
- Taxes should rely on the least volatile income sources.
- Taxes should have the lowest possible rates spread across the broadest base.
- Educate your citizens regarding taxes and tax increases — do not try to hide them.

Conclusion

You are not only a delegate sent to directly represent your constituents. You are a trustee. You were elected because your constituents respect you and have faith that after considering all the information, you will make the best decision for them, their family, and their freedoms.

There are countless factors to consider as you make decisions. Allow us to suggest that you look first to the *3 Cs of Elected Governance*.

First, the Constitution. As an elected official, you should work to respect and adhere to the principles and legal precedent created by both the US and the Utah constitutions, which you took an oath to support, obey, and defend. In any question you face, you should first ensure that the proposed action is constitutional.

If an issue is constitutional, you should then consult your conscience. You were elected because your constituents felt that there was something special about you that would allow you to make the best decisions possible. Let your principles and your moral compass guide you in making tough decisions.

If a proposed action does not raise constitutional questions and you can in good conscience support it, then it may be worth consulting — or at least considering — your constituents. You would be useless if all you did was directly echo the voice of the majority.

This does not mean that you should not be concerned with the voice of your constituents. Listen to the con-

cerns of individuals on both sides of the issues and allow that insight to guide your decisions, provided that what they demand is not unconstitutional or problematic morally or ethically.

If you haven't already, you will soon learn that there are many voices involved in the process of local governance. You will come into office with an entire bureaucracy in place and, unlike changes in government at the federal level, your election will likely not be accompanied with a significant change in staff.

That being said, you need to remember that staff are not elected officials. Your staff will almost certainly be made up of intelligent people who are doing their best to do their job and make the world a better place. However, they are not held accountable by the people and, thus, should not be running the show.

Coming into office, you will likely feel overwhelmed and lost. While staff members may be there to guide you as you start out, remember that you were elected by the people and you are in charge.

Beyond the staff, there are even more voices vying for your attention. Entities related to and involved in local governance include special service districts, planning commissions, boards, agencies, city festival committees, volunteers, businesses, chambers of commerce, Utah League of Cities and Towns, Mountainland Association of Governments, Council of Governments, to name a few.

These organizations are full of capable people who will be valuable resources to you. Just remember that while they are incredible people, they are not necessarily the people you were elected to represent.

This can all feel like a load of highfalutin idealism, especially if you occupy a minority position within your local government. If you are a freedom-loving local official dealing with colleagues who are less than sympathetic to your cause, we commend you. We also want to note that you can lead from any seat. You can be effective and influential even if no one is on your side.

Always be cordial and remember that even if you disagree, your relationships will be your greatest asset as you work to promote good local policies. Use storytelling to argue for principles, to help others understand the real impact of what is being proposed. Always frame the conversation with your audience in mind. Use data to drive your work and make policy decisions that are grounded in reality.

Remember that success cannot be measured simply in wins and losses. It not only matters who wins but how they win.

If you are outvoted but you effectively represent a strong, reasonable, and persuasive perspective for freedom, you should consider that a success. Your voice is needed to help defend the rights and freedoms of those who elected you to lead.

We commend you for your hard work and dedication to public service. You are not alone on your quest for responsible and limited government. Please reach out to us at any point in this process. You can send us an email at info@libertas.org and we will happily connect with you.

Other resources:

Better Cities Project

Better Cities Project is a national think tank aimed at helping America's cities find innovative, effective, and market-oriented policy solutions. Reach out to them for publications and ready-to-implement policy changes for some of the most prevalent challenges faced by local governments. You can find them at better-cities.org.

Strong Towns

Strong Towns is an organization dedicated to improving the financial future of America's cities and towns. They provide insightful media and training for local officials and citizens. Reach out to them for assistance with growth, infrastructure, and finances. You can find them at www.strongtowns.org/

Utah Taxpayers Association

The Utah Taxpayers Association represents taxpayers and works to promote efficient, economical government and fair and equitable taxation. Reach out to them with questions about good tax policy. You can find them at utahtaxpayers.org/

American City County Exchange

The American City County Exchange (ACCE) is a non-partisan free market forum for local policymakers. Reach out to access a network of local elected officials, leading industry experts, and policy analysts sharing ideas and experiences. You can find them at www.alec.org/membership-type/american-city-county-exchange-membership

The Atlas

The Atlas is an online community where local leaders can network and learn from each other. Reach out to them to be a part of the community and gain access to case studies written on recently enacted policies at a local level so other leaders can learn from those facing similar challenges. You can find them at <https://the-atlas.com/>

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