

Keeping the Peace Between Neighbors Without Restricting Rights

Authored by Molly Davis
Criminal Justice Policy Analyst



SUMMARY

The term “big government” typically invokes images of Congress or the Legislature, but it is likewise applicable, in many ways, to laws that affect our lives in a far more direct manner, at a local level.

Hitting close to home, the rules and regulations imposed by city and county officials cover everything from the type of grass that can grow in a family’s front yard to what activities are allowed within one’s own home. While our attention is often drawn to federal and state

laws, local ordinances must be checked to ensure that individual rights are not unreasonably restricted.

Failure to comply with local ordinances can bring criminal consequences including fines and jail time. A fear of these harsh consequences creates a chilling effect for people who would like to utilize their property as they wish. While local ordinances are typically intended to foster a better environment for all residents, they often neglect the rights of the individual.

Local laws should not restrict a person’s use of their own property if there is no nuisance to nearby neighbors.

Over a century ago, local laws generally respected property rights and did not invasively micromanage the specific actions done on a person's property. Since then, zoning laws have proliferated and local officials have fully yielded to the temptation to preemptively regulate human behavior through detailed ordinances that restrict a person's use of their property.

In other words, the regulations surrounding property use have become largely disconnected from how that use actually impacts surrounding neighbors to help keep the peace. Instead, arbitrary ordinances have empowered city bureaucrats and code enforcement officers to impose penalties on activities that don't actually bother anyone.

The following examples help illustrate the problem with that approach, suggesting the need for a solution that brings the regulatory pendulum back into balance.

Arbitrary Pet Rules

City codes are often extremely selective on what animals a person can own, usually based on the zone type and size of the property. These laws typically limit the number of animals one can own and sometimes specify what sort of housing they must be kept in. They require vaccinations alongside yearly registration and licensing fees, not only for dogs and cats but other animals such as ferrets and pigs as well. Noncompliance can result in hefty fines and even jail time.

For example, most cities in Utah impose arbitrary, non-flexible restrictions on the number of dogs you can own on a single-family

residential property—often limited to just two. The penalty for disobeying this animal limit is usually criminal: a class B misdemeanor. This consequence can extend to most violations of animal laws, even for a simple registration or vaccination violation.

These penalties aren't theoretical. In the past five years over 1,200 people have been cited with a minimum penalty of a \$50 fine for lack of pet registration in Salt Lake City; in Salt Lake County there have been over 700 citations during the same time frame. In Sandy, there were over 900 citations, with fines as high as \$350 per incident. If the citations go unpaid, the city may decide to pursue criminal charges. These examples help demonstrate how common these penalties are.

The effects of these inflexible rules were experienced by the Sorensen family in Clearfield. Samantha and her husband, Geoff, are both active duty in the Air Force while the children attend school and keep up with their hobbies. They are a well liked and

respected family who are courteous to those who live around them.

But the Sorensens made a family decision that ran afoul of Clearfield's ordinances: when they decided it was time for another pet, they chose a pig.

Before they purchased the new pet, they talked to their neighbors to make sure they were okay with the idea and even went to their local animal control center to ensure they could legally keep a pet pig in their home. Animal Control officers said they didn't see any problems with it. After every box was checked, they brought home Maximus, their new pet pig.

Maximus quickly became a big hit in the neighborhood as the cutest new member of the Sorensen family. Kids came to play with him, and adults enjoyed the novelty of seeing a pig being walked around the block like the dogs they were used to. But a few months after Maximus had settled into his new life, Animal Control came knocking.



Although the Sorensens made sure Maximus was fully vaccinated and neutered, and even house trained, it wasn't enough to appease the city. The family was told that they were breaking the law by keeping Maximus and were cited and ordered to stop.

No one should be considered a criminal for peacefully keeping an animal on their property, especially if that animal isn't bothering anyone or diminishing a neighbor's quality of life. However, because of restrictive city ordinances, individuals are denied opportunities to bring certain animals into their home, not based on any evidence or data, but on arbitrary restrictions that are enforced even when no neighbor has a complaint to offer.

Short-term Rentals

With the rise of popularity in hotel alternatives through websites like Airbnb or VRBO, many Utahns have benefitted by renting out parts of their own home to help supplement their income and meet new friends. Local officials in jurisdictions across the state have grappled with the rising popularity of home sharing with varying degrees of responses, from passive non-enforcement or active legalization to outright prohibitions that deny property owners this opportunity altogether.

Although the Utah Legislature passed a bill to protect this activity from arbitrary enforcement, municipalities still impose strict rules to severely limit where, or if, short term rentals are permitted.¹ While they may be allowed in certain single-family residences in St. George, for example, restrictions make it extremely difficult to actually operate one.² Property owners can only rent their home if none of their



The Palmer family who was threatened with criminal charges for sharing their home.

neighbors within 500 feet have a short term rental already, if the property is located on two or more acres, and if all surrounding property owners within 300 feet have given written consent. These strenuous rules unfairly prevent many people from being able to rent part of their home.

It is a fundamental and inalienable right to use one's own property so long as the use does not infringe on others' rights.³ This right includes a

homeowner's ability to rent out their home if they choose—so why are cities closing the door on a source of additional income and property enjoyment for their residents?

Twenty families in Sandy have experienced that door shut on them in the last five years.⁴ In the same time period, Moab has had twenty-four recorded violations.⁵ Both of these cities host visitors who are ready to experience iconic Utah: Moab with striking Arches National Park and Sandy conveniently adjacent to majestic mountains and the "greatest snow on earth." Regulations that make short term rentals impossible or frustrating put a limit on Utah residents' ability to share their home state and its wonders in a personal and unique way.

It's imperative to recognize that these homeowners only represent the unlucky few who were caught using their homes for a purpose the city prohibits. A casual review of Airbnb and VRBO shows that many others who currently rent out their

Restrictions on the use of one's property should be limited to ensuring that surrounding property owners are not negatively affected.

homes are likely in violation of city ordinances. Yet their actions are not inherently harmful to neighbors in any way.

Restrictive city ordinances regarding home rentals include penalties that place a heavy burden on families who are often trying to ease their financial situation by utilizing their own property in a productive way. Penalties for short term rental violations vary by jurisdiction, but in some places the cost is unexpectedly severe.

For violations in Kane County, the penalty is \$200 per day and up to 90 days in jail,⁶ in Moab individuals can be fined up to \$500 per day,⁷ and residents of Hurricane⁸ and St. George⁹ can be fined up to \$1,000 per day and sent to jail for six months.

These laws and penalties harm families. For example, Karina Palmer is a stay at home mom who cares for four kids. In 2014, she and her husband, Stephen, began to supplement their income by renting out their house on Airbnb. Their new venture ran smoothly for the family, and the extra income they received helped pay their mortgage.¹⁰

The arrival of a cease and desist letter in their mailbox was a complete surprise to the Palmers, informing them that they were allegedly breaking the law by renting their home. The city had no evidence, but sent the letter as a warning for them to stop utilizing their property in this way, threatening that if they continued to do so, a class B misdemeanor charge would be issued alongside a lien on their property.

This meant the threat of up to six months in jail and a fine of up to \$1,000, as well as a claim on their property.¹¹

None of the Palmers' neighbors had ever complained about their home sharing activity. They even live next to their mayor and asked him whether he was bothered by their Airbnb services. He not only said no, but also admitted he had no idea the house was ever being rented out—indicating it wasn't a problem for him or surrounding neighbors.

What happened to the Palmers is a direct result of invasive city government policies—so invasive that they affect what goes on in the privacy of one's own home. And this is not an isolated incident. The Palmers are only one example of over 200 people who were penalized for violating the short term rental code in the last five years in St. George.¹² State legislation to protect private property use for short term rentals has been previously attempted, but failed to fully pass due to the opposition of cities and their taxpayer-funded lobbyists. Although a bill with some protections eventually passed, it had been substantially weakened by the time it was voted on.¹³

An even more alarming case happened in Salt Lake County. A Midvale man, Adam Burak, realized he was breaking city law by renting out his basement for extra income.¹⁴

Instead of hiding the rental, he paid \$700 to the city to have his house rezoned so that he could legally rent it. The city sent him a letter refusing to rezone his home while also ordering him to rip out his second kitchen in the basement. Astonished at the order, Burak decided to fight back to keep his home the way it was.

The court sided with Burak, and ruled he could keep the additional kitchen. He was happy with the ruling, but disappointed he had to fight in court for his right to keep his property unharmed. The city of Midvale has refused to pay for his court costs, and Burak has decided to sue them to be made whole again. Burak's ordeal could have been avoided had the city recognized that his actions—renting his basement and having a second kitchen—harmed no one.

Sharing one's home can be a material benefit to families all across the state. Instead of keeping the interests of the government as a priority when creating laws governing the use of property, policy makers should instead prioritize and respect the essential rights of individuals to use their property as they wish, provided they do no harm to others.



Adam Burak in his basement featuring a prohibited kitchen.



Home-based Businesses

Whether it's knitting hats, making quilts, or baking delicious treats, sustaining a thriving business from the comfort of one's home is a dream turned into reality for many Americans. However, throughout Utah, these business owners have been cumulatively paying over \$1 million each year to their cities to obtain a permission slip to do so.

This revenue generation provides no added protection or benefit for the home-based business. And such permission should not be needed when the activity in no way impacts neighbors. For example, a nearby resident would have no idea whether a person was 3D printing a model train for fun or to instead sell on a website like Etsy. Such activities should not fall under the scrutiny of city officials, as they do not impact anybody any differently than typical residential use of the property.

The Augustines were one family that shared their experiences with

legislators in hopes of changing the law, helping elected officials understand the absurdity of making them jump through hoops for the legal ability to generate income in their own home. Elaine, the mother, is a seamstress who occasionally takes on client work. Her children also engage in various entrepreneurial activities such as babysitting or operating a lemonade stand.

"I try and teach my children to be honest and to be law abiding citizens," Augustine told Libertas Institute. "Yet, here was a ridiculous law leaving me the option of ignoring it and teaching my kids that it was okay to ignore the law, or voluntarily complying by either making my children get licensed or not letting them engage in 'business' activities. I settled with educating them about the law and engaging them in the process of changing it."

As of 2017—following three years of effort in attempts to restrict this law—Utahns are now exempt from paying a fee to obtain a business

license to operate within their own home, so long as their external impact is no greater than the impact of normal residential use.¹⁵ This is one less burden for home-based entrepreneurs to deal with.

Put simply, the Legislature recognized that individuals should be able to legally make money in their home if it's not hurting or bothering anyone—and they shouldn't have to pay their city for the privilege of doing so. If noise, smell, or traffic problems arise from the business operation, nuisance codes should already be in place to take care of those concerns.

Despite this Legislative allowance, many cities defy the law's intent and continue to stubbornly demand fees from residents seeking to operate a home-based business, in addition to sometimes requiring home inspections and other legal hurdles.

Landscaping

No one wants to live next to neighbors with a terribly overgrown yard strewn with debris. Not only is it an eyesore, but it may also decrease surrounding property values, possibly affecting the entire neighborhood. This is bad news for families looking to sell their home. Many cities throughout Utah have responded to this dilemma by imposing rules of what a yard and home must look like, including what can and can't be built on the property, what sort of fencing is allowed, the specific types of plants one can have, and even how tall the grass can grow. These rules may have originally sprung from good intentions, but their consequences can be devastating.

As a result of these ordinances, individuals have had to pay



Betty Perry's Orem residence at the time of her arrest.

outrageous fines, and some have even had to defend themselves in court against a penalty that included the possibility of jail time. In the past year, over 370 people have been penalized in Ogden alone with citations stemming from lawn and landscaping violations.¹⁶ During the last five years, Orem has had a handful of situations that escalated to criminal citations for residents who didn't take care of their weeds.¹⁷

One such example is Betty Perry, a widowed 70-year-old grandmother who found herself in jail after an incident arising from allegedly violating an Orem City ordinance.¹⁸ In the summer of 2007, Betty failed to water her lawn because she couldn't afford to pay for the water it would take to keep it green.¹⁹ An Orem police officer showed up at Betty's door to write her a ticket for the dead lawn, but she refused to provide her name and fully comply. The officer arrested Betty and took her to jail where she was later released with all charges dropped.

Betty may not have realized she was breaking the law by allowing her

grass to die. Even if she did know, her financial burdens were understandably more important. Luckily her charges were dropped—but if pursued, she could have ended up with a class C misdemeanor charge or a \$100 per day fee until the alleged nuisance was corrected or abated.²⁰ Any corresponding legal fees would have also been her responsibility.

While Betty might have pleaded ignorance to the law, Michael Goldman, an Ogden resident, got a bit more creative. When code enforcement officers told him he needed to fix his dead lawn within the next 10 days, he realized there was no way he could afford to do so with the cost estimated at of \$1,700—money which he needed to support his wife and daughter.²¹ Instead, he painted his lawn green with environmentally friendly paint which cost him only \$70. If the eyesore was the main problem, he thought this simple remedy could be a solution.

When officers came to check out the lawn, they told him his solution was not appropriate and he would need to fix his lawn by watering or landscaping immediately. They also noticed he had a chicken pen in his yard and told him he needed to remove those as well.

As far as Michael knew, neither the yard nor the chickens had been the subject of a complaint and weren't bothering anyone but city officials. Michael faced a \$500 per day fine for non-compliance, which could result in jail time if left unpaid.

Although \$500 may seem extreme for a violation that isn't causing anyone harm, this harsh penalty is common in municipalities across Utah.

Conclusion

Breaking a city code violation may seem like a minor offense, but in reality, it can result in heavy fines, criminal arrests, convictions, and even time behind bars. This is particularly harmful to disadvantaged people who may not have the money or physical ability to quickly comply. Even elderly or disabled homeowners face the threat of jail time, which is a bewildering predicament for someone who has done no harm.²²

No one should be jailed for simply failing to care for their lawn according to an arbitrary government standard, just as no one should fear that the government will forcibly deny the companionship of a peaceful pet because of a zoning ordinance.

The goal of local ordinances should be to keep peace between neighbors while maintaining safe neighborhoods—not to arbitrarily control the activities of peaceful property owners. Micro-managing residents this way is wrong. Cities should be limited in the penalties they can impose for such small offenses, and the circumstances in which these controlling ordinances can be enforced against residents.

PROPOSAL: A STATEWIDE STANDARD FOR PROPERTY RIGHTS

The Utah Legislature should ensure that property rights are protected by restricting how local ordinances pertaining to property use are enforced. Language along the following lines will achieve this goal:

1. As used in this section, “officer” means a law enforcement officer, code enforcement officer, prosecutor, or employee of a political subdivision.
2. An officer may only enforce an ordinance involving a restriction of a person’s use of their primary residence if the officer reasonably believes that the action involves or produces:
 - a. a nuisance upon the person’s neighbors;
 - b. a particularized and verifiable threat to public health or safety; or
 - c. a substantially negative impact upon the property value of surrounding residences.
3. Subsection (2) does not apply if:
 - a. the person is suspected of violating a state law; or
 - b. the use in question pertains to a business that is not a home-based business.

Endnotes

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5. Email correspondence with Moab Development Services Coordinator, November 5, 2018.
6. “Short Term Rentals” Kane County, Utah, <https://kane.utah.gov/gov/dept/planning/short-term-rentals/>.
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10. “The Right to Rent Your Own Home.” Libertas Institute, <https://www.youtube.com/watch?v=3tsHhJ7wLH8>.
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15. “SB 81: Exempting Home-Based Businesses from Fees and Licensure,” Libertas Institute, <https://libertasutah.org/bill/sb-81-exempting-home-based-businesses-from-fees-and-licensure/>.
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18. “Orem City Code.” The City of Orem, Utah, <http://online.encodeplus.com/regs/orem-ut/doc-viewer.aspx#secid-1>.
19. Sam Penrod, “Woman arrested for Not Watering Lawn,” KSL, <https://www.ksl.com/?sid=1444771&nid=148>.
20. “11-1-10 Orem City Code.” The City of Orem, Utah. <http://online.encodeplus.com/regs/orem-ut/export2doc.aspx?pdf=1&tocid=001&file=doc-001-pid-26.pdf>.
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22. “Payson lawyer gives a voice to Utah homeowners charged with property crimes,” *Standard Examiner*, July 12, 2017.

PUBLIC POLICY BRIEF

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===== TO =====
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PRINCIPLES IS
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THE SECURITY
===== OF =====
INDIVIDUAL
RIGHTS

UTAH CONSTITUTION
ARTICLE I, SEC 27