IN THE THIRD JUDICIAL DISTRICT COURT

SALT LAKE COUNTY, STATE OF UTAH

SALT LAKE CITY CORPORATION, Plaintiff, vs. UTAH INLAND PORT AUTHORTY, STATE OF UTAH, GARY HERBERT, and SEAN REYES, Defendants.	MEMORANDUM DECISION AND ORDER Case No. 190902057 Judge James Blanch

This matter is before the court on cross-motions for summary judgment. Plaintiff Salt Lake City (the "City") filed its motion first, challenging the constitutionality of certain provisions of the Utah Inland Port Authority Act under the Utah Constitution. Defendants Utah Inland Port Authority, State of Utah, Governor Gary Herbert, and Attorney General Sean Reyes (collectively, the "State") filed a memorandum in opposition to the City's motion in which it also sought summary judgment, asserting the City's claims fail as a matter of law. The court held oral argument on November 18, 2019. Samantha Slark argued on behalf of the City, and Lance Sorenson argued on behalf of the State.[1] Following oral argument, the court took the motions under advisement. Now, being fully advised, the court renders this Memorandum Decision and Order.

INTRODUCTION

This case presents the question of whether the Utah Constitution prohibits the Utah State Legislature from seizing control from Salt Lake City over the development and operation of an

[1] The court commends counsel on both sides for the extraordinarily high quality of the briefing and oral argument in this case.

"inland port" to be developed in the northwest quadrant of the City and delegating some of that control to a "Port Authority Board." The answer is no. Whether wise or unwise,[2] the Utah Inland Port Authority Act (the "Act")[3] is sufficiently infused with a state purpose that it does not run afoul of the "Ripper Clause" in the Utah Constitution, which prohibits the Legislature from delegating purely municipal authority to "special commissions."[4] Nor does the Act violate the other provisions of the Utah Constitution the City cites. For these reasons, the court must grant summary judgment in favor of the State and against the City.

Despite the Act's presumed constitutionality,[5] the City contends that in various ways the Act violates Article VI, Section 28 of the Utah Constitution—the "Ripper Clause," which provides:

> The Legislature shall not delegate to any special commission, private corporation or association, any power to make, supervise or interfere with any municipal improvement, money, property or effects, whether held in trust or otherwise, to levy taxes, to select a capitol site, or to perform any municipal functions.

Utah Const. Art VI, § 28. This clause and similar clauses in several other states' constitutions provide an interpretative challenge to courts because municipalities do not possess inherent constitutional powers. Rather, municipalities are creatures of the State, which has plenary

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[2] "It's neither this court's right nor its vocation to make constitutional judgments based on its view of whether the legislature has made good or bad policy judgments." *Richards v. Cox*, 2019 UT 57, ¶ 1 n.1, 450 P.3d 1074 (making the quoted observation with respect to limitations on the Utah Supreme Court's authority—limitations that apply with equal if not greater force to this district court's authority). In other words, in our system of separate powers, appropriate judicial respect for the political branches of government prohibits courts from rejecting constitutionally permissible legislative choices based on disagreements with the policies they represent.

[3] Utah Code § 11-58-101, *et seq.* (2018).

[4] Utah Const. Art VI, § 28.

[5] "[W]hen confronted with a constitutional challenge to a statute, [the court must] presume the statute to be constitutional, resolving any reasonable doubts in favor of constitutionality." *Richards*, 2019 UT 57 at ¶ 39 (*quoting Univ. of Utah v. Shurtleff*, 2006 UT 51, ¶ 30, 144 P.3d 1109).

authority over their functions.[6] This principle would appear at first blush to mean the Ripper Clause prohibits nothing, but any interpretation that renders the clause meaningless would of course be disfavored. Further, as discussed in detail below, the Utah Supreme Court has relied upon the Ripper Clause to invalidate statutes that impermissibly delegate certain municipal functions to special commissions, indicating the Ripper Clause does impose a meaningful limitation on the Legislature's power. But the precise scope of that limitation has proven difficult to identify in the governing case law.

The Utah Supreme Court attempted to resolve this conundrum in the 1988 case of *City of West Jordan v. Utah State Retirement Board*, 767 P.2d 530 (Utah 1988), which remains valid authority that this court is required to follow.[7] First, *West Jordan* clarifies that the Ripper Clause "prohibits *only* the legislature's *delegating* certain powers relative to municipal matters to a special commission." *Id.* at 533 (emphasis added). In other words, it does not prohibit direct legislative action or legislative mandates that do not involve the "delegation" of a power to a special commission. Second, concerning whether an activity is a "municipal function" that the Legislature cannot delegate, *West Jordan* provides a test to determine whether a function is "sufficiently infused" with a "state interest" to escape classification as a municipal function, as opposed to being infused with an "exclusively local interest." *Id.* at 534. In other words, *West Jordan* appears to stand for the proposition that although the Legislature has plenary authority over all municipal powers, once it has granted municipalities powers that are infused with an

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[6] *See, e.g., Call v. City of West Jordan*, 606 P.2d 217, 218 (Utah 1979) ("[C]ities have no inherent sovereign power, but only those granted by the Legislature."). *See also Salt Lake City v. Tax Comm'n of Utah*, 359 P.2d 397, 399 (Utah 1961) ("Cities are creatures and agencies of the state, which latter possesses plenary power over them.").

[7] *See also Utah Associated Municipal Power Systems v. Public Service Comm. of Utah*, 789 P.2d 298 (Utah 1990) (restating, reaffirming, and applying the method of analysis for Ripper Clause claims set forth in *West Jordan*).

"exclusively local interest," those functions become "municipal functions" under the Ripper Clause, which thereafter prohibits the Legislature from delegating the functions to special commissions.

Under this analytical framework, the City's challenge to the Act under the Ripper Clause fails. Some aspects of the Act fall outside the scope of the Ripper Clause because they are direct legislative mandates, rather than "delegations" of authority to the Port Authority Board or anyone else. These include the diversion of tax differential to finance construction of inland port projects, the prohibition against the City's interference with inland port uses, and the requirement that the City furnish infrastructure to support inland port uses with the right of reimbursement. The only aspects of the Act identified by the City that involve "delegation" of allegedly municipal functions are the provisions allowing the Port Authority Board to make land-use, or zoning, decisions concerning "inland port uses" on the jurisdictional land. But even if the Port Authority Board is a "special commission" within the meaning of the Ripper Clause (which the court will assume for purposes of its analysis), the State has articulated sufficiently compelling state interests justifying this aspect of the Act to prevent its classification as a "municipal function" for purposes of the Ripper Clause.

For these reasons, the Act does not violate the Ripper Clause.[8] Nor is the court persuaded the Act violates the other provisions of the Utah Constitution the City cites. The City argues the Act violates Article XI, Section 8 of the Utah Constitution, but that provision merely grants

[8] The question of whether to develop an inland port at all in the Northwest Quadrant has generated fierce public debate, but this case does not involve the question of whether there will or will not be an inland port. It is just a dispute about power. This case turns only on the question of whether the City or the State has the constitutional authority to control the development and maintenance of the inland port, not whether an inland port or should not be developed. This case also does not include issues concerning the legality of any particular inland port functions under environmental laws or otherwise. Such disputes will be resolved in a different forum at another time.

authority to the Legislature to create "political subdivisions" other than cities or towns. It does not prohibit the Legislature from doing anything. The City further contends the Act violates Article XI, Section 5 of the Utah Constitution, which prohibits the Legislature from creating "cities and towns" by special laws. But the Port Authority Board is not a city or town, and the City has not cited any authority for the proposition that this constitutional provision may be applied to entities that are not, strictly speaking, cities or towns. Additionally, the court is persuaded the Act does not violate the Uniform Operation of Laws provision in Article I Section 24 of the Utah Constitution because there is a rational basis for the Act's distinction between municipalities that contain jurisdictional land (where the provisions of the Act are mandatory), and municipalities that do not (where the Act only applies with the municipalities' consent). Finally, because the court determines the City has not prevailed on the merits in this case, it follows the City is not entitled to an injunction against the implementation of the Act.

THE UTAH INLAND PORT AUTHORITY ACT

The court will not recite all facts set forth in the parties' briefs, but will confine its discussion to those facts necessary to address the parties' competing requests for summary judgment. The facts are taken from the materials submitted in connection with the briefing on the parties' respective motions and the presentations made at oral argument.

In 2015, the Utah State Legislature voted to relocate the Utah State Prison to the northwest quadrant, a largely undeveloped 22,700-acre expanse within Salt Lake City (the "Northwest Quadrant"). Because of the proximity of the Northwest Quadrant to interstate freeways, interstate rail lines, and the Salt Lake International Airport, discussions concerning the potential development of an "inland port" in the Northwest Quadrant had occurred in one form or another for a number of decades. Following the decision to move the prison, which will

involve the construction of infrastructure to allow access and the provision of utility services to the prison, private landowners that collectively own thousands of acres of land in the Northwest Quadrant initiated discussions with elected officials of the City concerning the potential development of an inland port to facilitate the distribution of goods. The City's discussions with these private landowners were productive, and the outlines of a proposal began to emerge under which an inland port would be developed on private land in the Northwest Quadrant, administered by a port authority board under the control of the City, with projects to be financed through increases in property taxes attributable to development ("tax differential") and land-use decisions to be made under the City's existing administrative procedures.

As discussions between the City and landowners progressed, state legislators began to involve themselves to a greater extent in the negotiations over the inland port concept. In December 2017, the Governor's Office of Economic Development received a feasibility analysis estimating that an inland port could create approximately 24,000 new jobs in Utah. In 2018, Utah's Speaker of the House of Representatives Greg Hughes and other state legislators met with representatives from the City, Salt Lake County, and private property owners regarding a proposed inland port.

The first bill drafted in the process that ultimately led to passage of the Utah Inland Port Authority Act established the Port Authority Board (the "Authority"), a nine-member board of directors to include three members from the City and one member from Salt Lake County. This initial bill delegated to the Authority the power to reverse City land-use decisions that did not meet the Act's strategies, policies, and objectives. The bill also required the City to pay the Authority a five percent annual growth-related property tax differential, *i.e.*, the increase in property taxes collected after a certain date. In response to the proposed bill, the City expressed

its displeasure with the delegation of exclusive jurisdiction over land-use decisions to an unelected, unaccountable board of directors.

Several iterations of the bill followed. The Fourth Substitute Bill was passed at the eleventh hour and contained several alterations from previous versions. Each representative of the Salt Lake City area voted against the Fourth Substitute Bill. This final bill increased up to 100% the amount of growth-related property tax differential to be diverted to the Authority; it increased the boundary of the "jurisdictional land" to include 3,000 acres from the cities of West Valley and Magna; and it increased the size of the board to eleven and reduced the City's representation from three to two, eliminating the Mayor's position. It also prevented the City from interfering with "natural resources" passing through the inland port, and it delegated to the Authority the power to develop and construct infrastructure such as water treatment plants, water and sewer lines, roads, electricity and natural gas service, and transportation facilities.

Governor Gary Herbert signed the final bill on March 16, 2018. On May 8, 2018, the Utah Inland Port Authority Act became law. *See* Utah Code § 11-58-101, *et seq.* Governor Herbert acknowledged the City had concerns regarding the Act's delegation of the City's traditional authority over land use, infrastructure, tax revenue and municipal functions, and he called for a special session in July 2018 to "modify and improve the bill." At the special session, the Act was amended to require that the City "allow an inland port as a permitted or conditional use," and it increased the time period during which the City must cede the tax differential to the Authority.

The latest amendment came in 2019 and reclassified the entire 16,157 acres of "authority jurisdictional land" as one project area, roughly 13,000 acres of which are within Salt Lake City

(about one-fifth of the geographical area of Salt Lake City),[9] and the remaining 3000 acres lie within West Valley City and Magna. Currently there are approximately 225 landowners that collectively own 472 parcels of real property within the jurisdictional land. In addition, the 2019 amendment increased the redirected growth-related property tax differential associated with the development of inland port uses on the jurisdiction land from up to 100% to simply 100%, provided for immediate collection by the Authority of growth-related property tax, extended the period the Authority may collect this growth-related property tax from 25 years to 40 years, prohibited the City from banning inland port functions, required the City to maintain infrastructure to support inland port functions (but with a provision requiring reimbursement to the City for such developments), and delegated to the Authority land-use-decision-making authority with respect to projects on the jurisdictional land that constitute "inland port uses."

The Authority's eleven-member Board of Directors now consists of seven appointees: two appointed by the Governor, one by the president of the Senate, one by the Speaker of the House, one by the chair of the State's Permanent Community Impact Fund Board, one by the Salt Lake County Mayor, and one by the West Valley City Manager with the consent of the City Council. The remaining four members are positional: the executive director of the State's Department of Transportation; the director of the Salt Lake County Office of Regional Economic Development; the chair of the Salt Lake Airport Advisory Board (or the chair's designee); and the Salt Lake City Council member whose district includes the Salt Lake City International Airport. As of November 1, 2019, the Authority has two full-time staff, including Executive Director Jack Hedge.

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[9] Although the jurisdictional land is sometimes described casually in the briefing as "City land," the vast majority of it is privately owned land that falls within the City's boundaries. It is not land the City owns. The land will be developed for inland port uses only to the extent its private property owners desire to develop it in that fashion.

The Act's statement of purpose provides:

> (3)(a) The purpose of the authority is to fulfill the statewide public purpose of working in concert with applicable state and local government entities, property owners and other private parties, and other stakeholders to encourage and facilitate development of the authority jurisdictional land and land in other authority project areas to maximize the long-term economic and other benefit for the state, consistent with the strategies, policies, and objectives described in this chapter, including:
>
> (i) the development of inland port uses on the authority jurisdictional land and on land in other authority project areas;
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> (ii) the development of infrastructure to support inland port uses and associated uses on the authority jurisdictional land and on land in other authority project areas; and
>
> (iii) other development on the authority jurisdictional land and on land in other authority project areas.

Utah Code § 11-58-201(3)(a). The Act lists the following as its "policies and objectives":

> (1)(a) maximize long-term economic benefits to the area, the region, and the state;
> (b) maximize the creation of high-quality jobs;
> (c) respect and maintain sensitivity to the unique natural environment of areas in proximity to the authority jurisdictional land and land in other authority project areas;
> (d) improve air quality and minimize resource use;
> (e) respect existing land use and other agreements and arrangements between property owners within the authority jurisdictional land and within other authority project areas and applicable governmental authorities;
> (f) promote and encourage development and uses that are compatible with or complement uses in areas in proximity to the authority jurisdictional land or land in other authority project areas;
> (g) take advantage of the authority jurisdictional land's strategic location and other features, including the proximity to transportation and other infrastructure and facilities, that make the authority jurisdictional land attractive to:
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> (i) businesses that engage in regional, national, or international trade; and
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> (ii) businesses that complement businesses engaged in regional, national, or international trade;
>
> (h) facilitate the transportation of goods;
> (i) coordinate trade-related opportunities to export Utah products nationally and internationally;
> (j) support and promote land uses on the authority jurisdictional land and land in other authority project areas that generate economic development, including rural economic development;
> (k) establish a project of regional significance;

(l) facilitate an intermodal facility;
(m) support uses of the authority jurisdictional land for inland port uses, including warehousing, light manufacturing, and distribution facilities;
(n) facilitate an increase in trade in the region and in global commerce;
(o) promote the development of facilities that help connect local businesses to potential foreign markets for exporting or that increase foreign direct investment; and
(p) encourage all class 5 through 8 designated truck traffic entering the authority jurisdictional land to meet the heavy-duty highway compression-ignition diesel engine and urban bus exhaust emission standards for year 2007 and later.

Id. at § 11-58-203(1).

ANALYSIS

This case primarily turns on the legal question of whether certain provisions of the Utah Inland Port Authority Act violate the Utah Constitution's Ripper Clause, which places constitutional limitations on the State's authority over municipalities. The City challenges, both facially and as-applied,[10] portions of the Act as unconstitutional under four provisions of the Utah Constitution: Article VI, Section 28 (the "Ripper Clause"); Article XI, Section 8; Article XI, Section 5; and Article I, Section 24.

In a case such as this, the mere filing of cross-motions for summary judgment does not necessarily mean the case may be finally disposed of as a matter of law. "Cross-motions for summary judgment do not ipso facto dissipate factual issues, even though both parties contend for the purposes of their motions that they are entitled to prevail because there are no material issues of fact." *Amjac Interwest, Inc. v. Design Associates*, 635 P.2d 53, 55 (Utah 1981).

[10] *See State v. Houston*, 2015 UT 40, ¶ 130, 353 P.3d 55 ("There is no clear, established distinction between 'facial' and 'as-applied' challenges[.]"); *United States v. Supreme Court of New Mexico*, 839 F.3d 888, 908 (10th Cir. 2016) ("[T]he line between facial and as-applied relief is a fluid one, and many constitutional challenges may occupy an intermediate position on the spectrum between purely as-applied relief and complete facial invalidation."); and *Vega v. Jordan Valley Medical Center, LP*, 2019 UT 35, ¶ 5, 449 P.3d 31 (in a facial challenge, the court will "only overturn the will of the legislature when 'the statute is so constitutionally flawed that no set of circumstances exists under which the [statute] would be valid.'") (*citing Gillmor v. Summit Cty.*, 2010 UT 69, ¶ 27, 246 P.3d 102).

"[C]ross-motions for summary judgment do not warrant the court in granting summary judgment unless one of the moving parties is entitled to judgment as a matter of law upon facts that are not genuinely disputed." *Id.* (quoting 6 Moore's Federal Practice, 341-344 (2nd ed. 1976)). In other words, although both parties similarly contend the case may be resolved as a matter of law without the necessity of trial, both parties may be incorrect under Rule 56 of the Utah Rules of Civil Procedure. Although the parties do not entirely agree on their Statements of Undisputed Material Facts, there are no genuine disputes of fact sufficient to preclude summary judgment. Because the court ultimately agrees with the State's position, the court construes disputes of facts, to the extent there are any, in favor of the City. *See IHC Health Servs., Inc. v. D & K Mgmt., Inc.*, 2008 UT 73, ¶ 19, 196 P.3d 588 (holding that in assessing each of the parties' competing motions, the court separately draws all reasonable inferences in a light most favorable to the party opposing summary judgment).

I. Article VI, Section 28 (the "Ripper Clause")

The City seeks a declaratory judgment that provisions of the Act violate the Utah Constitution's Ripper Clause by interfering with the City's authority over (a) municipal land-use zoning, (b) municipal functions, and (c) municipal monies.

a. History of Ripper Clauses in State Constitutions

Early in America's history, state constitutions granted legislatures plenary power—later termed police power—over municipalities, in part because of the distrust of governors who still had allegiance to England. David O. Porter, *The Ripper Clause in State Constitutional Law: An Early Urban Experiment*, 1969 UTAH L. REV. 287, 298.[11] State legislatures began to take

[11] The Utah Supreme Court quoted the Porter article extensively and favorably in the *West Jordan* case. 767 P.2d at 533-34. The court therefore accords greater persuasive weight to the Porter article than it ordinarily would to a law review article.

advantage of this power and appointed special commissions and local boards that took control over the municipal functions of cities and towns. *Id.* at 299. Industry boomed in the years following the Civil War, and as urban populations grew, rural state legislators capitalized on their powers over urban infrastructure and began to exploit the cities through special acts dealing with municipal affairs. *Id.* at 290. For example, New York's legislature appointed commissions that wrested away from New York City control of its own police department, fire department, parks, transit, liquor taxes, and public health. *Id.* at 301. Nevertheless, courts routinely upheld the states' plenary powers, and cities were unsuccessful in invoking federal due process to limit legislative control over municipal functions. *Id.* at 289, 299-303.

In 1874, Pennsylvania became the first state to ratify a "ripper clause" in response to legislatively created private and special acts. For instance, one commission had required the city of Philadelphia to pay for construction projects that the city considered poorly designed and unwisely located. *Id.* at 307. Pennsylvania's ripper clause became the model for states that followed and provides: "The General Assembly shall not delegate to any special commission, private corporation or association any power to make, supervise or interfere with any municipal Improvement, money, property or effects, whether held In trust or otherwise, or to levy taxes or perform any municipal function whatever." *Id.* at 310. It appears the term "ripper clause" originated because such clauses serve to "rip" plenary power from the State in favor of a municipality's right to perform municipal functions. *Id.* at 309.

Eight states now have ripper clauses in their constitutions, each generally prohibiting legislative interference with local affairs, municipal purposes or functions, or corporate purposes through special commissions or appointed officers, or special, local, or private acts. *See id.* at 303 ("The inherent right of local self-government doctrine received wider acceptance than the no

taxation without representation rule."). After Pennsylvania ratified the first ripper clause, California, Colorado, Montana, New Jersey, South Dakota, Wyoming, and Utah followed suit. *Id.* at 290.

b. Utah's Ripper Clause

Utah's Constitution, ratified in 1895, included a ripper clause from the beginning. Virtually identical to Pennsylvania's ripper clause, it provides:

> The Legislature shall not delegate to any special commission, private corporation or association, any power to make, supervise or interfere with any municipal improvement, money, property or effects, whether held in trust or otherwise, to levy taxes, to select a capitol site, or to perform any municipal functions.

Utah Const. Art VI, § 28. In the 125 years since statehood, only approximately 22 Utah appellate opinions have interpreted or applied the Ripper Clause. Analysis of potential Ripper Clause violations is challenging due to the difficulty involved in determining what kinds of municipal activities the clause insulates from legislative interference despite the general constitutional principle that municipalities are creatures of the State, over which the Utah Legislature has plenary power. Until the Utah Supreme Court's 1988 opinion in *West Jordan v. Utah State Retirement Board*, 767 P.2d 530 (Utah 1988), this tension in constitutional analysis created a patchwork of *ad hoc* determinations as to whether an allegedly "municipal" function was fair game for the Legislature to delegate to a special commission, or whether it was protected from interference by the Ripper Clause. This hodgepodge of results, described in more detail below, appeared unmoored to any consistent, predictable principles of constitutional analysis.

In *West Jordan*, the Utah Supreme Court, quoting the Porter article with approval, described this tension in the Court's early Ripper Clause jurisprudence as follows:

These ripper clauses, although often written in virtually identical language, have been given different interpretations in different states and often within one state at different times. *See id.* at 310–11 & nn. 147–50, 481–90. This is understandable to some extent because, for example, conceptions of what constitutes an area of uniquely local concern that ought to be under the control of local government—the concept underlying the ban on delegating the "perform[ance of] any municipal functions"—has varied among states and over time. *See* Utah Const. art. VI, § 28; Porter at 485 & nn. 178, 179. Particularly apt here is a quotation from Porter in which he discusses the indeterminacy of the meaning given other state constitutional provisions designed to restrict legislative action with respect to subjects described variously as "local affairs," "municipal purposes," or "corporate purposes":

> Although such phrases were meant to serve as standards for the courts in determining the areas of city action protected from legislative interference, they have been of limited value because the only meaning that can be given to the words "local" and "municipal" on their face is geographical rather than legal. Since a geographical definition would allow cities complete freedom to act within their boundaries, which would completely disrupt state government, the final determination as to what is "local" or "municipal" is thrust upon the judges, "who have no guides to decision except the often conflicting views of other states." The result has been that the phrases "local affairs" and "municipal functions" have simply not gained any empirical meaning, even after a century of interpretation.

Porter at 295 (footnotes omitted).

This sort of uncertainty fairly characterizes the case law that purports to give meaning to the term "municipal functions" in article VI, section 28. *A review of our decisions provides relatively little by way of a consistent analytical framework for determining how to characterize a given area of activity.*

West Jordan, 767 P.2d at 533-34 (emphasis added).

A discussion of early Utah case law interpreting the Ripper Clause is helpful in providing some understanding of the kinds of activities the Utah appellate courts have historically identified as meriting protection from legislative interference under the Ripper Clause. One of the first cases in Utah applying the Ripper Clause was *City of St. George v. Public Utilities Commission*, 220 P. 720 (Utah 1923), where a legislatively created public utility commission had

ordered a private electric company to raise its rates. The Utah Supreme Court upheld the commission's decision, finding that in the absence of a clear surrender to cities of authority to regulate public utilities, the state retained that power. *Id.* at 725. Next came *Logan City v. Public Utilities Commission,* 271 P. 961 (Utah 1928), in which a utilities commission had ordered Logan City to raise its electric rates to be competitive with a private power company. The Court found this a violation of the Ripper Clause, as the action complained of was "beyond the power and jurisdiction of the commission." *Id.* at 974. The Court stated:

> To say that the power of the commission, not withstanding the Constitution, to supervise, regulate, and control the business and fix rates and charges of a municipally owned and operated plant is the same as that of a privately owned public utility, is to disregard or not give effect to the Constitution, for a municipality is specifically and exclusively mentioned therein, and the Constitution in such particular expressly and exclusively adopted for the benefit and protection of only municipalities.

Id. at 973. *See also Barnes v. Lehi City*, 279 P. 878 (Utah 1929) (holding that city's authority over its electric plant prohibits regulation by Public Service Commission).

The Utah Supreme Court issued several Ripper Clause decisions in the 1930s. Following the end of Prohibition, the Liquor Control Act established a commission to regulate alcohol and issue permits in addition to conferring limited authority to municipalities to sell and control alcohol sales. *Riggins v. District Court of Salt Lake County*, 51 P.2d 645 (Utah 1935). The Court held, "The state's authority to regulate and control the sale of light beer becomes a municipal function when, and only when, the state divests itself and invests a municipality with such powers." *Id.* at 656. *See also Lehi City v. Meiling*, 48 P.2d 530 (Utah 1935) (holding Water District did not interfere with municipal functions where the property, improvements, and money belonged to the district, not the city); *State Tax Comm'n v. City of Logan*, 54 P.2d 1197 (Utah 1936) (finding no violation of the Ripper Clause where Tax Commission collected sales

tax on city's electricity sold to customers, as obligation to collect sales tax is not restricted to cities alone); and *State ex rel. Pub. Serv. Comm'n v. S. Pac. Co.*, 79 P.2d 25 (1938) (stating legislature is without authority to deprive Tax Commission of its constitutionally-specified powers over taxing).

Since the 1930s, Utah Supreme Court cases discussing the Ripper Clause have been sporadic. In *Tygesen v. Magna Water Company*, 226 P.2d 127 (Utah 1950), the Court found no violation of the Ripper Clause where a legislative act vested control of county-initiated improvement districts to perform functions "separate and distinct from any of the functions assumed" by the county, stating that improvement districts do not control municipally owned properties or "the manner of the performance of any of the functions which the counties have assumed." *Id.* at 130. *See also County Water System v. Salt Lake City*, 278 P.2d 285 (Utah 1954) (holding city's sale of excess municipal water outside its borders was incidental to city function and is not subject to Public Service Commission regulations).

In one case from 1975, the Pollution Control Board, to which the Legislature had granted authority over all bodies of water within Utah, had issued citations to Salt Lake City for code violations. *State Water Pollution Control Bd. v. Salt Lake City*, 311 P.2d 370 (Utah 1957). In considering the Ripper Clause, the Utah Supreme Court noted that sewage disposal is "almost invariably left to cities to perform" and that statutes had specifically granted cities the power to operate sewer systems. *Id.* at 374. However, the Court noted, the Pollution Control Board has the authority to step in when a municipality may operate a water system that threatens to pollute the waters "beyond the confines of the city." *Id.* at 375.

In Backman v. Salt Lake County, 375 P.2d 756 (Utah 1962), the Court was tasked with determining the constitutionality of a legislative requirement that all counties of a certain size

hold a special election to fund a county auditorium and sports arena, and which levied a tax in the counties. In finding the mandate a violation of the Ripper Clause, the court commented, in *dicta*, that if the Ripper Clause "has any meaning at all, it would seem to be applicable here; otherwise a legislative act could create a commission with authority to levy 10 mills,—or more, to operate and maintain the highway system of a municipality, its parks and recreation areas, sewage disposal, health department, the police force, the fire department, parades, and even municipal government itself, ad infinitum." *Id.* at 761.

The Court later overturned *Backman*, in part, in *Municipal Building Authority of Iron County v. Lowder*, 711 P.2d 273 (Utah 1981). There, Iron County desperately needed a new jail but was prohibited by the Utah Constitution from taking on debt without voter approval, and the voters had rejected a bond to fund a new jail. The Court operated under the assumption that a jail is a municipal function. *Id.* at 281. Under the state's Municipal Building Authority Act, Iron County created a Building Authority to take out a loan, construct the jail, and lease it to the county. The county itself took on no debt. The Court stated, "[o]f course the Act is intended to permit avoidance of the constitutional debt limitations. It is the very rigidity of those limitations that has led the courts to narrowly construe them and the legislature to actively assist local government in avoiding them." *Id.* at 280. In splitting from the *Backman* decision from nearly 20 years earlier, the Utah Supreme Court rejected the "restrictive and anachronistic approach" of *Backman* regarding taxation. "Instead, we construe the prohibitions of article VI, section 28 narrowly so as to facilitate flexibility in local government finance." *Id.* at 281.

In *Tribe v. Salt Lake City Corporation*, 540 P.2d 499 (Utah 1975), the Court upheld provisions in the Redevelopment Act enabling Redevelopment Agencies to tackle blight. Although blight in Salt Lake City "would appear to have only local operation, [] it must be

remembered that it is a local operation of an act of general statewide scope." *Id.* at 502. Whether the Redevelopment Agency's actions were constitutional under the Ripper Clause, the Court stated, "hinges on whether the objects and purposes of the Act are statewide or local; and whether the Agency, as structured by the Act, is such a one as can concurrently exist with municipal corporations and assessment units." *Id.* *Tribe* clarified that the Ripper Clause prohibits legislative interference only in "areas of purely municipal concern." *Id.* at 503.

Next came the *Firefighters* case. *Salt Lake City v. Int'l Ass'n of Firefighters, Locals 1645, 593, 1654 & 2064*, 563 P.2d 786 (Utah 1977). In discussing public firefighters, the Utah Supreme Court stated that "[b]y conferring the right to perform a state affair, the matter is not converted into a municipal function, over which the state has constitutionally relinquished control. The state may withdraw or modify that portion of its power, which it has conferred." *Id.* at 789. The Court cited to a case from Nebraska that considered the municipal-function-versus-state-function question in a different way, *i.e.*, whether the state could intervene if a municipality were to abolish—essentially abandon—its own municipal powers over the same action:

> This concept is illustrated in *Axberg v. City of Lincoln*, wherein it was observed that if a fire department be deemed purely a matter of local self-government, it could be impaired or abolished and the state would be unable to interfere. Police and fire protection are essential to the administration of state government, which has the duty to protect and defend the rights of its citizens to life, liberty, and property. The duty of the state cannot be circumscribed by city limits, particularly where uniform state action may often be required. Police, fire, and health protection are matters of statewide concern.

Id. at 789-790 (*citing Axberg v. City of Lincoln*, 141 Neb. 55, 2 N.W.2d 613 (1942)).

Shortly after *Firefighters,* the Utah Supreme Court again addressed urban blight in *Salt Lake County v. Murray City Redevelopment*, 598 P.2d 1339 (Utah 1979). Finding no Ripper Clause violation, the court noted, "[a]s redevelopment inures to the benefit of the public

generally, the public may be charged for the benefits of improvements through general taxation of the state, not solely by Murray City." *Id.* at 1343. Then, in *State v. Hutchinson*, 624 P.2d 1116 (Utah 1980), the Utah Supreme Court disavowed Dillon's Rule, under which a grant of power to municipalities is "strictly construed to the exclusion of implied powers not reasonably necessary in carrying out the purposes of the expressed powers granted." *Id.* at 1119 n.4. The Court observed that strict construction of a general welfare grant "effectively nullifies the legislative grant of general police powers." *Id.* at 1119. "Broad construction of powers of cities is consistent with the current needs of local governments." *Id.* at 1125.

In addition to the above cases from Utah, the parties have cited several cases from outside Utah that have deemed the following to be pure municipal functions: salaries of municipal employees, the power to levy taxes, bonds secured by municipal property, setting rates for municipally-owned utilities, and public parks. *See Peters v. Parkhouse*, 36 Pa. D&C 2d 527 (C.P. 1965); *Merchants' National Bank of San Diego v. Escondido Irrigation District*, 77 P. 937 (Cal. 1904); *Town of Holyoke v. Smith*, 226 P. 158 (1924); and *Hames v. City of Polson*, 215 P.2d 950 (Mont. 1950).

The case law described above was the historical backdrop against which the Utah Supreme Court decided the watershed 1988 case of *City of West Jordan v. Utah State Retirement Board,* 767 P.2d 530 (Utah 1988). That case summarizes prior Utah jurisprudence regarding the Ripper Clause; candidly acknowledges the prior lack of a cohesive analytic framework for the consideration of claimed constitutional violations under the Ripper Clause; and sets forth an analytical framework to assess whether a statute's delegation of authority to a special commission is "sufficiently infused" with a state interest to pass muster under the Ripper Clause, or whether it delegates activities of "exclusively local" interest in violation of the constitution.

The analytical approach set forth in *West Jordan* remains valid law in Utah,[12] and this court is obligated to follow it.

In *West Jordan*, the Utah Legislature had enacted a state retirement system in which political subdivisions were presumed members unless they specifically opted out. At first West Jordan opted out, then later it opted in, and then it attempted to opt out again. In response, the Legislature passed a bill stating that any political subdivision of the state that was a member of the retirement system prior to 1982 may not opt out, but any political subdivision that was not a member by 1982 was presumptively a member but could voluntarily opt out. The city challenged the legislation under the Ripper Clause, arguing that the state had usurped the city's municipal function of operating a retirement system for public employees.

The Court in *West Jordan* acknowledged the difficulty in pinning down what constitutes a municipal function versus a state function under the Ripper Clause, noting that its prior cases were not particularly helpful to its analysis. The Court declined to provide a "hard and fast" list of purely municipal functions or of state functions. *Id.* at 534. "However, our more recent cases, such as *Tribe* and *International Ass'n of Firefighters,* reflect an increasing willingness to recognize that many functions traditionally performed by municipalities may be sufficiently infused with a state, as opposed to an exclusively local, interest to escape characterization as 'municipal functions' for purposes of article VI, section 28." *Id.* at 534. The Court created a non-exclusive list of three considerations to guide future courts in determining whether an activity delegated by a statute is "sufficiently infused" with a "state interest" to pass

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[12] *See, e.g., Utah Associated Municipal Power Systems v. Public Service Comm. of Utah*, 789 P.2d 298 (Utah 1990) (restating, reaffirming, and applying the method of analysis for Ripper Clause claims set forth in *West Jordan*). There has been no case that is binding on this court subsequent to either *West Jordan* or *UAMPS* that modifies the analytical approach mandated by those cases or calls the validity of that analysis into question in any way.

constitutional muster, or is a municipal function characterized by an "exclusively local interest" that the legislature may not delegate under the Ripper Clause: (1) the relative abilities of the state and municipal governments to perform the function, (2) the degree to which the performance of the function affects the interests of those beyond the boundaries of the municipality, and (3) the extent to which the legislation will intrude upon the ability of the people within the municipality to control, through their elected officials, the substantive policies that uniquely affect them. *Id.* "This sort of balancing approach is best suited to accomplishing the purposes of the ripper clause without erecting mechanical conceptual categories that, without serving any substantial interest, may hobble the effective government which the state constitution as a whole was designed to permit." *Id.* at 534.

Also, and very importantly for purposes of this case, the Court clarified in *West Jordan* that legislative enactments fall outside the ambit of the Ripper Clause unless they involve the "delegation" of activities to a special commission, private corporation, or association. "Article VI, section 28 prohibits *only* the legislature's *delegating* certain powers relative to municipal matters to a special commission." *Id.* at 533 (emphasis added). Thus, the Ripper Clause does not prohibit direct legislative interference with municipal activities, even those that are significantly disruptive. Unless a legislative mandate involves the "delegation" of an activity to a special commission or other similar entity, as opposed to direct interference with an activity, the legislation does not implicate the Ripper Clause.

The *West Jordan* Court upheld the constitutionality of the Retirement Act, finding the retirement board had not intruded "in the functioning of local government; it simply manages the funds in an actuarily sound fashion and pays benefits." *Id.* at 535. The state can do a better job of providing a financially sound retirement program to public employees by consolidating funds,

a function municipalities cannot do. Through the state's general welfare powers, the State has a legitimate interest in the retirement benefits for all its public employees across the state. And the legislation left local units with complete autonomy as to whether to offer retirement benefits to their employees. *Id.* "On balance, we conclude that the level of intrusiveness on local self-government resulting from this legislation is minimal and does not warrant our holding that the policies underlying the ripper clause are affected." *Id.* Although *West Jordan* is over thirty years old, its non-exclusive, three-part test for determining whether a function is "state" or "local" in nature remains binding for the purpose of analyzing Ripper Clause claims.

c. The City's Claims under the Ripper Clause

The City contends that the Act violates the Ripper Clause by infringing on the City's powers over (a) land use and zoning, (b) municipal functions, and (c) municipal monies.

The court must approach the City's challenges presuming the constitutional validity of the Act. *See, e.g., West Jordan*, 767 P.2d at 532 ("[W]e begin with the presumption of validity that must be accorded legislative enactments when attacked on constitutional grounds. The burden is on those who would have us strike down an act."); *Richards v. Cox*, 2019 UT 57 at ¶ 39, 450 P.3d 1074 ("[W]hen confronted with a constitutional challenge to a statute, [the court must] presume the statute to be constitutional, resolving any reasonable doubts in favor of constitutionality."); *State v. Drej*, 2010 UT 35, ¶ 9, 233 P.3d 476 (presuming challenged legislation is constitutional and resolving any reasonable doubts in favor of constitutionality); *State v. Herrera*, 1999 UT 64, ¶ 18, 993 P.2d 854 (the Court will not strike down legislation unless it clearly violates a constitutional provision); *Merrill v. Utah Labor Comm'n*, 2009 UT 26, ¶ 5, 223 P.3d 1089 (the party challenging a statute bears the burden of proving its invalidity); and *Utah Technology Finance Corp. v. Wilkinson*, 723 P.2d 406, 412 (Utah 1986) (courts should not

upset a legislative determination unless it is "palpably erroneous"). "The courts have a duty to investigate and, insofar as possible, discover any reasonable avenues by which the statute can be upheld." *Trade Commission v. Skaggs Drug Centers, Inc.*, 446 P.2d 958, 962 (Utah 1968). However, "there is a limit: if the legislature has erred in its understanding of the constitution, it is our right and duty to intervene. We do not abrogate our duty to interpret and apply the mandates of the constitution." *Richards*, 2019 UT 57 at ¶ 40.

The court must also approach its analysis bearing in mind, as noted above, that cities are political subdivisions of the State. Their powers are either expressly given or are implied as essential to carrying out the objectives and responsibilities granted by law. *Johnson v. Sandy City Corp.*, 497 P.2d 644, 645 (Utah 1972). *See also Salt Lake City v. Tax Comm'n of Utah*, 11 Utah 2d 359, 362 (1961) ("Cities are the creatures and agencies of the state, which latter possesses plenary power over them."); *Call v. City of West Jordan*, 606 P.2d 217, 218 (Utah 1979) ("It is not questioned that cities have no inherent sovereign power, but only those granted by the Legislature."); *Allgood v. Larson*, 545 P.2d 530 (Utah 1976) ("The state may always invade the field or regulation delegated to the cities and supercede, annul, or enlarge the regulation which the municipality has attempted. It may modify or recall the police power of the city as it may abolish the city itself."); and *Firefighters*, 563 P.2d at 789 (stating Legislature may withdraw its delegation of power to municipalities, which "have none of the elements of sovereignty").

A challenge to legislation under the Ripper Clause requires a two-fold inquiry. First, the City must show that the Authority is a "special commission, private corporate or association." Utah Const. Art VI, § 28. If that threshold requirement is met, the City must then demonstrate that the Legislature delegated purely municipal functions to the Authority. The City argues the

Authority is a special commission that is unaccountable to and unrepresentative of the City. The State counters that it is an independent public corporation, a political subdivision of the State. *See* Utah Code § 11-58-201(2). The Utah Supreme Court has explained the distinction.

> A quasi-municipal corporation has been defined as a public agency created by the legislature to aid the state in some public work for the general welfare, other than to perform as another community government. A municipal corporation is a body politic and corporate, created to administer the internal concerns of the district embraced within its corporate limits, in matters peculiar to such place and not common to the state at large. A special commission is some body or group separate and distinct from municipal government. *Such a commission is not offensive to the constitution by its creation, but only when such a commission is delegated powers which intrude into areas of purely municipal concern.*

Tribe, 540 P.2d at 502–03 (emphasis added). Here, because the court finds the Act does not impermissibly delegate purely municipal activity to the Authority, it is not necessary to decide whether the Authority is a "special commission." The court will presume that it is for purposes of the Ripper Clause analysis. The Court in *West Jordan* employed a similar analytical approach. 767 P.2d at 532 ("For the purposes of argument, we will assume that the Board constitutes a 'special commission,' although the Utah cases do not give this term any clear meaning.").

The second inquiry under the Ripper Clause is whether the Legislature has delegated to the Authority power either "to make, supervise or interfere with any municipal improvement, money, property or effects" or "to perform any municipal functions." Utah Const. Art VI, § 28. While all power granted to the City ultimately flows from the State, in order for the Ripper Clause to have any import, there must be some limitation to the State's ability to usurp municipal functions. The City believes the State has crossed that line with several provisions of the Act.

Significantly, of the three Ripper Clause claims brought by the City, only one—the authority to overturn the City's administrative land-use decisions—involves the kind of "delegation" of activity that might possibly fall within the prohibitions of the Ripper Clause.

West Jordan, 767 at 533 (holding the Ripper Clause "only" prohibits "delegating"). The other two claims regarding municipal monies and municipal infrastructure are not delegations of power to interfere with a municipality's functions but are instead direct mandates and direct exercises of legislative power. Regardless, even if those aspects of the Act did delegate municipal functions to the Authority, those functions, like land-use and zoning, are sufficiently infused with a state interest that they do not violate the Ripper Clause.

i. Land Use and Zoning

The City asserts the Act confers power on the Authority to interfere with the City's municipal land-use authority in three ways: (a) by delegating zoning decisions of private property to the Authority's Appeals Panel, Utah Code § 11-58-403(5)(b); (b) by prohibiting the City from interfering with the "transporting, unloading, loading, transfer, or temporary storage of natural resources," *id.* at § 11-58-205(6); and (c) by requiring the City to approve a zoning change application or conditional use application to permit Inland Port uses, *id.* at § 11-58-205(5).[13]

The City takes particular issue with the Act's usurpation of final administrative determinations regarding the zoning of private property within the City's boundaries for any inland port use and for any reason contrary to the objectives of the Act. "Inland port use" is defined broadly as the use of land for an inland port, or a use that furthers or complements the purposes of an inland port, or a use "that depends upon the presence of the inland port for the viability of the use." *Id.* at § 11-58-102(9). The power to make such determinations is delegated

[13] The last two of these grounds—prohibiting interference with natural resources and requiring zoning approval for inland port uses—are direct legislative mandates, not delegations of power, and thus the Ripper Clause is not implicated. Nevertheless, as discussed below, even if they were delegations of power, they are sufficiently infused with a state interest to pass muster under the Ripper Clause.

to an Appeals Panel under the auspices of the Authority, thus directly implicating the question (assuming, as the court does, that the Authority constitutes a special commission) of whether such delegation runs afoul of the Ripper Clause.

The Appeals Panel consists of either the Authority's eleven-member Board of Directors or "one or more individuals designated by the board." *Id.* at § 11-58-402(2). The Act provides: "A person adversely affected by an inland port use appeal decision [of a municipality] may appeal the inland port use appeal decision to the appeals panel." *Id.* at § 11-58-403(1). The Appeals Panel conducts a *de novo* review and may:

> (5)(b) decide in favor of the person adversely affected by the inland port use appeal decision if the appeals panel determines that the inland port use appeal decision:
>
> > (i) is clearly contrary to the policies and objectives under Subsection 11-58-203(1);
> > (ii) imposes restrictions or conditions on the proposed development that unreasonably impair or essentially prohibit an inland port use; or
> > (iii) is arbitrary and capricious, or illegal[.]

Id. at §§ 11-58-403(5)(b) and -403(2)(b)(ii).

The City argues municipal land use and zoning are purely municipal functions, that the City is in a better position than the State to manage the inland port, that the effects of the inland port will be felt most by residents of Salt Lake City, and that these residents are without a voice to effect change through their locally elected representatives.

1. State Function

In *West Jordan*, the Utah Supreme Court set forth a three-pronged test for determining whether a function is a state function or a purely municipal function for purposes the Ripper Clause. This court must and will consider those three factors in deciding whether activities delegated to the Authority under the Act are state or local functions. But nothing in the *West*

Jordan opinion prohibits the court simply from assessing directly whether the Act is "sufficiently infused" with a state interest to pass muster under the Ripper Clause. Indeed, the *West Jordan* Court itself immediately engaged in considering directly whether the Retirement Act was infused with a state interest after announcing the three-part test designed to guide that inquiry. *See* 767 P.2d at 534-35 ("First, the state certainly has a legitimate interest in determining the minimum level of retirement benefits provided to public employees by its political subdivisions, among others."). Thus, *West Jordan* does not prohibit a direct and explicit analysis of whether challenged legislation is infused with a state purpose, as opposed to addressing the question obliquely through application of the three factors. The court finds it useful to address that issue directly prior to assessing the three *West Jordan* factors.

The Legislature is not prohibited from rescinding police powers it has granted to municipalities in the defense of a strong state purpose, even when this may interfere with municipal functions and hamper the ability of a local population to curtail the state activities through local elected officials. The State argues that among other things, such a state purpose arises from the legislative finding that an inland port may create 24,000 jobs throughout Utah. The City argues the creation of jobs alone is not a *per se* reason to find a valid state purpose. The court agrees in theory that an economic justification by itself may not elevate a municipal function to a state function for purposes of the Ripper Clause in some situations. But just as the Utah Supreme Court in *West Jordan* declined to adopt any hard and fast rules, the Legislature's stated purpose, policies and objectives are a reasonable manifestation of a compelling state purpose to "maximize long-term economic benefits," create high-quality jobs, facilitate the transportation of goods, and promote development of facilities to connect local businesses to foreign markets. Utah Code § 11-58-203(1). The court affords deference to those legislative

findings. In this case, the inland port is a massive, state-wide project, and the State's interest in maintaining consistency over zoning regarding inland port uses is necessary for its smooth operation.

2. Relative Abilities

West Jordan next requires an analysis of the relative abilities of the City and the State to perform the functions in question. The City argues zoning of private property is a municipal function for both historical and practical reasons. It cites Utah's Municipal Code, which endows municipalities with the authority to divide their territories into zoning districts and to "regulate and restrict the erection, construction, reconstruction, alteration, repair, or use of buildings and structures, and the use of land." Utah Code § 10-9a-505(1). Likewise, Utah's Municipal Land Use, Development, and Management Act grants municipalities the authority to provide for the health, safety, and welfare of its residents. In particular,

> To accomplish the purposes of this chapter, a municipality may enact all ordinances, resolutions, and rules and may enter into other forms of land use controls and development agreements that the municipality considers necessary or appropriate for the use and development of land within the municipality, including ordinances, resolutions, rules, restrictive covenants, easements, and development agreements governing: uses; density; open spaces; structures; buildings; energy efficiency; light and air; air quality; transportation and public or alternative transportation; infrastructure; street and building orientation; width requirements; public facilities; fundamental fairness in land use regulation; and considerations of surrounding land uses to balance the foregoing purposes with a landowner's private property interests and associated statutory and constitutional protections.

Id. at § 10-9a-102(2).

The City argues that in addition to the statutory authority given to cities, the City itself is better situated to handle zoning issues regarding private property, and it has a long history of doing so through general and master planning to guide development. The City has 67 separate zoning categories, and when it reasonably anticipates negative effects from a land use, the City

may impose conditional uses such as limiting hours of operation or imposing mitigation measures for noise or pollution. The City's land-use decisions are reviewed by three subdivisions staffed by land-use experts. The Division of Building Services reviews routine building permit applications; the Planning Division with a staff of 30 considers conditional use permit applications, planned development, and special exceptions; and the Planning Commission, made up of city residents appointed by the Mayor and with the consent of the City Council, addresses the more impactful use permitting and planned development issues. The Planning Commission holds public hearings and issues findings and recommendations that may be appealed to a hearing officer.

The City points to its agreement with the State regarding the Utah State Prison relocation project as an example of appropriate land-use power-sharing. There, the City and the State's Division of Facilitates Construction and Management executed an agreement regarding the infrastructure, design, construction, ownership, and funding of necessary municipal improvements to serve the new prison. Under that agreement, the City retains oversight authority over the affected private properties. The City also points to the prison relocation project as an example of the State's lack of municipal-planning experience and poor foresight. The City asserts the State has refused to fund any infrastructure beyond the bare minimum required to service the prison, particularly regarding sewer and water lines, pump stations, streetlights, and roads. The City posits that any additional development to private property near the prison will require renovations to infrastructure that could have been avoided had the State planned ahead.

The State first counters that land-use regulations, including zoning, are state police powers that may be delegated but not surrendered. Utah's Municipal Code provides: "A

municipality may not impose a requirement, regulation, condition, or standard that conflicts with a provision of this chapter, other state law, or federal law." Utah Code § 10-9a-104. "The provisions of this Act may not be considered as impairing, altering, modifying or repealing any of the jurisdictions or powers possessed by any department, division, commission, board or office of state government." *Id.* at § 10-1-108. *See also Village of Euclid, Ohio v. Amber Realty Co.*, 272 U.S. 365, 387-88 (1926) (holding that a city's zoning ordinance was an appropriate use of state police power); *Norton v. Village of Corrales*, 103 F.3d 928, 932 (10th Cir. 1996) (referring to "the exercise of the state's traditional police power through zoning"); *Reed Co. v. North Salt Lake City*, 431 P.21d 559, 562 (Utah 1967) ("The power of North Salt Lake to zone is derived from the state."); *Patterson v. Utah County Bd. of Adjustment*, 893 P.2d 602, 607 ("[I]t is established that an owner of property holds it subject to zoning ordinances enacted pursuant to a state's police power."); *Smith Inv. Co. v. Sandy City*, 958 P.2d 245, 252 (Utah Ct. App. 1998) (recognizing that a city's power to enact zoning ordinance and to regulate private property stems from its police power); and *W. Land Equities, Inc. v. City of Logan*, 617 P.2d 388, 390 (Utah 1980) ("It is established that an owner of property holds it subject to zoning ordinances enacted pursuant to a state's police power.").

The State also argues it is in a better position to operate an inland port, citing the portion of the Act explaining the Legislature's rationale for a state-wide Act.

> (3)(b) The duties and responsibilities of the authority under this chapter are beyond the scope and capacity of a municipality, which has many other responsibilities and functions that appropriately command the attention and resources of the municipality, and are not municipal functions of purely local concern but are matters of regional and statewide concern, importance, interest, and impact, due to multiple factors, including:
>
> > (i) the strategic location of the authority jurisdictional land in proximity to significant existing and potential transportation infrastructure, including infrastructure provided and maintained by the state, conducive to

> facilitating regional, national, and international trade and the businesses and facilities that promote and complement that trade;
> (ii) the enormous potential for regional and statewide economic and other benefit that can come from the appropriate development of the authority jurisdictional land, including the establishment of a thriving inland port;
> (iii) the regional and statewide impact that the development of the authority jurisdictional land will have; and
> (iv) the considerable investment the state is making in connection with the development of the new correctional facility and associated infrastructure located on the authority jurisdictional land.
>
> (c) The authority is the mechanism the state chooses to focus resources and efforts on behalf of the state to ensure that the regional and statewide interests, concerns, and purposes described in this Subsection (3) are properly addressed from more of a statewide perspective than any municipality can provide.

Utah Code § 11-58-§ 201(3). The City decries this statutory characterization of the Act's need for state interference as self-serving, and it invites the court to disregard the weight of the Legislature's conclusions.

But the court may not disregard legislative findings as casually as the City suggests. The mere fact that the City is entitled to have genuine disputes of material fact resolved in its favor for summary judgment purposes does not require or permit the court to disregard legislative findings because the City contends they are disingenuous. To the contrary, the court is required to afford deference to legislative findings. In a prior Ripper Clause case, the Utah Supreme Court explained that "facts of the Legislature are presumed constitutional, especially when dealing with economic matters based on factual assumptions." *Wilkinson*, 723 P.2d at 412. That Court stated,

> We find no violation of [the Ripper Clause] here. The legislature in rather lengthy findings has determined that the aiding of emerging high-tech businesses will foster the growth of the state's economy and assist in creating employment for the citizens of the state. These findings are entitled to respect and weight by the judiciary and should not be overturned unless palpably erroneous.

Id. at 412-13.

Although the court does not necessarily accept at face value the Act's implication that the City (or any city) is incapable of fulfilling the responsibilities and duties of operating an inland port, the relevant consideration is not whether the City itself could competently do the job, but which entity is better positioned to do the job, and the Act's recitation of reasons why the State is better suited to operate the inland port is reasonable, particularly considering the strategic location of the Salt Lake City area to increasing Utah-based, national, and international trade. The jurisdictional land is at a literal crossroads of transportation with the potential for growth; and if, as hoped by the State, the inland port expands to other areas of Utah, this hub-and-spoke model is more efficiently operated by one entity. The City's competing contention is not that an inland port is bad policy or should not be located in the Northwest Quadrant. As noted above, despite passionate local opposition to the very concept of an inland port, the issue this court has been tasked to decide is only whether the City or the State has the constitutional authority to operate an inland port, not whether an inland port is a good idea.

Given the undisputed premise of this case that an inland port will be developed in the Northwest Quadrant, the Legislature has reasonably concluded that the function of running an inland port is a function properly within the State's ability to take over from the City and delegate to a port authority. In *West Jordan*, the Utah Supreme Court found that the State was better suited to provide a financially sound retirement program than a municipality. It stated that "there is every reason to believe that the state, by consolidating funds from many smaller political subdivisions and providing for continuity and expertise in the management of the funds, can do a better job than each separate local unit of government." 767 P.2d at 535. Likewise

here, consolidating land use policies into the Authority's purview could streamline the purpose of the Act to increase commerce and trade through the inland port.[14]

Nor does the court find fault with the State's contention that the Appeals Panel may appropriately exercise *de novo* review of the City's administrative zoning decisions and overturn those decisions it deems "clearly contrary to the policies and objectives under" the Act. Utah Code § 11-58-403(5)(b)(i). For the City to have ultimate say over the zoning of private property within the jurisdictional land, the State argues, could frustrate and impede the State's ability to promote economic well-being within Utah. For example, in the case of a wholly state purpose such as housing prisoners, whatever location the Legislature chooses will coincide with property located within a county and perhaps also a municipality. If the prison were surrounded by a city or county refusing to grant access to the prison, a political subdivision could stymie a critical state function in service of purely local objections. There surely are times when exercising a state function may require the interference with local control. Here, were the City to make land use decisions contrary to the goals of the Act, it could frustrate and impede the State's ability to promote the inland port.

Finally, it is significant that the Act delegates the above-described land-use and zoning powers to the Authority only with respect to projects that are "inland port uses" or that are

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[14] The parties raise two others points that are of limited relevance. First they discuss which of them is better situated to operate a "foreign trade zone" such as the one the City currently operates at the Salt Lake International Airport, and the City points out that far more cities than states operate foreign trade zones around the country. The State points out that New York and New Jersey both have ripper clauses, and they host a joint port authority (PANYNJ), which manages vast amounts of roads, tunnels, bridges, airports, etc., that it either owns or leases. The City retorts that PANYNJ does not exercise land use authority over private property. Pennsylvania also has a ripper clause and a port authority that does not regulate land use of private property (although it may relocate facilities without complying with local zoning ordinances). The majority of port authorities, the City asserts, are operated by municipal or similar political subdivisions and are generally funded through tolls, fares, rentals, or the state treasury. The court accepts this assertion as true for the purpose of the parties' motions.

"clearly contrary to the policies and objectives under the Act." In other words, the land-use and zoning powers delegated to the Authority are tailored to the legislative purposes enumerated in the Act—purposes that are sufficiently infused with a state interest to satisfy the constraints of the Ripper Clause. The Act does not purport to divest the City of all land-use and zoning power within the jurisdictional land. The City will still exercise its traditional land-use and zoning authority within the jurisdictional land except with respect to uses that either support or interfere with the inland port.

The City dismisses these limitations as meaningless, arguing the Authority will just characterize anything it wants to as an "inland port use" or an interference with the purposes of the Act and essentially usurp all City land-use and zoning authority within the jurisdictional land. The court is not persuaded this is a realistic concern. The language of the Act places the above-described limitations on the types of projects over which the Authority may exercise power. If the Authority were to disregard those limitations and attempt to exercise authority over projects that are not "inland port uses" or contrary to the purposes of the Act, there does not appear to be any impediment to the City seeking judicial relief to reclaim its power over land-use and zoning decisions that fall outside the scope of the powers delegated to the Authority.

3. Effects Outside Salt Lake City

The next element of the *West Jordan* test considers the degree to which the land use functions at issue affect those Utahans living outside the City's borders. While currently confined to primarily the City's borders, the inland port project appears to be a legislative work in progress and is expected to expand in geographical scope. If that occurs, Utah residents outside Salt Lake City would be directly affected. Regardless, even without actualization of the hub-and-spoke expansion, residents outside Salt Lake City are not unaffected by the ability of

the Authority to run the inland port as intended. The State points to a feasibility study by the Governor's Office of Economic Development that estimated that the inland port could create up to 24,000 new jobs. Not all of the employees working directly or tangentially on inland port functions will live in Salt Lake City.

4. Intrusion

The last factor of *West Jordan* is the "disenfranchisement" or "intrusiveness" element, and it represents the "paramount purpose" of the Ripper Clause, *i.e.*, "to prevent interference with local self-government." *West Jordan*, 767 P.2d at 534. The City asserts that, when read together, Utah's cases addressing the Ripper Clause reflect an overarching policy that land-use decisions are best controlled by local elected officials who are accountable to those who are affected. *See, e.g., State Water Pollution Control Bd.*, 311 P.2d at 376 (striking state pollution control board's authority over City's sale of water in its boundaries, as contrasted with water district in *Lehi v. Meiling* "initiated by the cities desiring the district") (citing *Lehi City v. Meiling*, 48 P.2d 530 (Utah 1935)); *Tribe*, 540 P.2d at 502 ("The agency is separate and apart from city government and yet is administered by a legislative body responsible to the local electorate."); *Tygesen*, 226 P.2d at 130 (recognizing statutes permitting creation of water districts and water improvement districts where "the initiating agencies were the legislative bodies of the cities desiring the districts"); and *Specht v. City of Sioux Falls,* 526 N.W.2d 727, 732 (S.D. 1995) (relying on *West Jordan* and finding authority managed by unelected commissioners with life terms had the "statutory authority to become a self-propelled, unaccountable, bureaucratic freight train"). *But see Firefighters,* 563 P.2d at 789 ("Thus, the act authorizes the appointment of arbitrators, who are private citizens with no responsibility to the public, to make binding determinations affecting the quantity, quality, and cost of an essential public service. The

legislature may not surrender its legislative authority to a body wherein the public interest is subjected to the interest of a group which may be antagonistic to the public interest.").

The State responds that the Act is not without limitations on the Appeals Panel's ability to affect the City's administrative land use determinations. The Act specifically provides that, except for the duties enumerated to the Appeals Panel, it "does not have and may not exercise any powers relating to the regulation of land uses on the authority jurisdictional land." Utah Code § 11-58-205(4). In addition,

> (b) An appeals panel may not consider an appeal of an inland port use appeal decision to the extent that the appeal involves municipal requirements concerning:
>
> (i) the construction of public utilities;
>
> (ii) the administration of construction codes defined in Section 15A-1-202;
>
> (iii) the permitting and building plan review for a development project, unless the appeal involves a denial of an inland port use application;
>
> (iv) the municipality's enforcement of a violation of a municipal code provision, unless the provision is inconsistent with the purposes of this chapter; or
>
> (v) fees or fines.

Id. at § 11-58-403(1). The court acknowledges the City is facing intrusion by the State on what it considers crucial land-use choices related to the wellbeing of its residents. Potential impacts could include increased pollution, noise and traffic and the appurtenant effects of those. Nor does the court deny that the Authority's Board of Directors and Appeals Panel are not elected to their roles and are not directly accountable to the City's residents through the local elective process (other than the one member of the Salt Lake City Council). However, on balance the court concludes that the delegation of exclusive decision-making over municipal zoning determinations does not violate the Ripper Clause. The appropriate question is not whether the function is municipal in nature, because indeed municipal zoning is almost always conducted by

municipalities or counties, but whether it is the type of function intended to be protected under the Ripper Clause, which the Utah Supreme Court has limited to activities that are "particularly" or "exclusively" local functions. *See West Jordan*, 767 P.2d at 523. The Court in *West Jordan* stated:

> [O]ur more recent cases, such as *Tribe* and *International Ass'n of Firefighters,* reflect an increasing willingness to recognize that many functions traditionally performed by municipalities may be sufficiently infused with a state, as opposed to an exclusively local, interest to escape characterization as "municipal functions" for purposes of article VI, section 28.

West Jordan, 767 P.2d at 534. Here, the *West Jordan* elements militate in favor of finding that the State is better positioned than the City to manage the inland port functions, via delegation to the Authority, without unconstitutionally interfering with the City's pure municipal duties. And the degree to which the inland port will affect Utah residents outside of Salt Lake City will, if anything, increase in the future.

ii. Municipal Functions

The City claims the Act interferes with its authority over core municipal functions by delegating to the Authority the power to develop, on private property within the City's boundaries, inland port infrastructure. The City then will be responsible for the upkeep and maintenance of the infrastructure, particularly of roads and sidewalks, including pothole repair, paving and snow removal; street lights; water and sewer pipelines; and trash pick-up, traffic control, fire and police service, and storage of hazardous items.

The Act delegates to the Authority the right to:

> (2)(b) facilitate and provide funding for the development of the authority jurisdictional land and land in other authority project areas, including the development of publicly owned infrastructure and improvements and other infrastructure and improvements on or related to the authority jurisdictional land;

Utah Code § 11-58-202(2)(b).[15] This portion of the Act applies to only those cities with jurisdictional land within their boundaries, *i.e.*, Salt Lake City, Magna and West Valley City.

> A municipality whose boundary includes authority jurisdictional land shall provide the same municipal services to the area of the municipality that is within the authority jurisdictional land as the municipality provides to other areas of the municipality with similar zoning and a similar development level.

Id. at § 11-58-205(7)(a)(i).

The City asserts it already engages in long-term planning for development of municipal infrastructure, but under the Act, the City is given no say in the construction of infrastructure that will eventually be deeded to the City and must be maintained by the City. The City must take on the liability for infrastructure that it may not have wanted in the first place, or that may not be constructed to specifications with which the City is comfortable. The City acknowledges the Act requires the Authority to reimburse the City for these increased municipal services due to inland port uses, but the City complains it is required to front the costs of the increased infrastructure, beyond the City's annual budget, which makes planning and allocation of limited resources difficult.[16]

The Authority's power over municipal functions on jurisdictional land is a specifically mandated power, not a delegation of discretionary power, and therefore, the Ripper Clause is not implicated. Moreover, even if the municipal functions given to the Authority were discretionary, it would still be constitutional under the *West Jordan* test because it is sufficiently infused with a state interest. In order to maintain consistency and efficiency in operating the inland port, the

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[15] "Publicly owned infrastructure and improvements" includes lines for water, sewer, gas, electricity, telecommunication and "streets, roads, curb, gutter, sidewalk, walkways, solid waste facilities, parking facilities, and public transportation facilities." Utah Code § 11-58-102(18).

[16] As with the issue of whether the City has a remedy if the Authority attempts to broaden its power beyond the limitations set forth in the Act, it appears to the court the City will have a wide range of judicial remedies available to it to ensure it receives adequate and timely reimbursement for infrastructure it constructs pursuant to the requirements of the Act.

State is better suited to plan the municipal infrastructure for inland port uses. In addition, performance of the Authority's functions affects the interests of many in Utah beyond the City's borders, especially considering the planned satellite areas. And although the City's residents may be disenfranchised regarding inland port activities, on the whole, the infrastructure development mandated by the Act is sufficiently infused with a state interest. Municipal land use authority stems from the State, and the State may reassert its authority over the same.

iii. Municipal Monies

The City asserts that the Act violates the portion of the Ripper Clause prohibiting the Legislature from delegating "any power to . . . interfere with any municipal . . . money." Utah Const. Art VI, § 28. The City calculates that the Act will redirect $360 million in property tax revenue away from the City. The Act mandates that the Authority

> (A) shall be paid 100% of the property tax differential, as provided in Subsection (3), for a period of 25 years after a certificate of occupancy is issued with respect to improvements on a parcel, as determined by the board and as provided in this part; and
> (B) may be paid up to 100% of the property tax differential, as provided in Subsection (3), for a period of 15 additional years beyond the period stated in Subsection (1)(a)(i)(A) if the board determines that the additional years of property tax differential will produce a significant benefit;

Utah Code § 11-58-601(1)(a). The Authority may use the property tax differential "for any purpose authorized under this chapter." *Id.* at § 11-58-602(1)(a). Beginning January 1, 2020, the Authority will also start receiving a portion of the sales and use tax revenue collected by the City for points of sale within the jurisdictional land. *Id.* at § 11-58-602(7).

The City argues collection of property tax is the essence of local self-government, and the loss of the tax differential hobbles its ability to provide municipal services for the increased infrastructure. Property taxes constitute roughly one-third of the City's general fund, which it uses for public development, municipal infrastructure, improvements, police and fire services,

public areas, permitting and licensing, parks and open space, and implementation of other policy objectives. The City notes that last year there was a 49% increase in property tax revenue on the jurisdictional land from the year before, and the proceeds from the sales and use taxes increased 30% from the prior year.

Here again, the diversion of the tax differential is a direct legislative mandate and is not a delegation of power subject to the Ripper Clause. Not only is the Authority's right to receive the tax differential a direct mandate, but the Utah Supreme Court has previously held the Legislature possesses the power to divert tax revenue from municipalities and counties. *See Tribe*, 540 P.2d at 504 ("the law is well settled that in exercising the powers of the state, the legislature may require the revenue of a municipality, raised by taxation, to be applied to uses other than that for which the taxes were levied"); *State ex rel. Public Service Commission v. Southern Pac. Co.*, 79 P.2d 25, 38 (Utah 1938) ("If the discretion and power of the Tax Commission had been given it by the Legislature under its plenary power over taxation, then the Legislature could withdraw part or all of the authority which it had delegated. . . . Legislative power over taxation is plenary except where limitations or exceptions are expressed in the basic law."); and *Zissi v. State Tax Com'n of Utah*, 842 P.2d 848, 855 (Utah 1992) ("in areas of economic regulation, we grant broad deference to the legislature").

The City has been granted the power to tax, but the Legislature may limit this power. *See Plutus Mining Co. v. Orme,* 289 P.132, 139 (Utah 1930) ("The authority of a city to tax property is not a vested right. Unless prohibited by some constitutional provision, the Legislature may limit or even deprive cities of their power to tax."); and *Moss ex rel. State Tax Commission v. Board of Com'rs of Salt Lake City*, 262 P.2d 961, 964 (Utah 1953) ("The City's power to tax is derived solely from legislative enactment and it has only such authority as is expressly conferred

or necessarily implied."). The State has the authority to direct how tax revenues are distributed among political subdivisions. *See Mountain States*, 811 P.2d at 192 ("The state, as we have already pointed out, in enacting the law in question, simply calls upon its agencies, the counties, and the cities to assist in discharging a public duty which in no way affects local self-government.") (*citing Salt Lake County v. Salt Lake City*, 134 P. 560 (1913)). Here, the Legislature is not taxing the City nor is it infringing on the City's right to tax property, sales and uses within its boundaries. It is instead redirecting a portion of taxes allocated by the City. *See* Utah Const. Art XIII, § 5(4) ("[T]he Legislature may not impose a tax for the purpose of a political subdivision of the State, but may by statute authorize political subdivisions of the State to assess and collect taxes for their own purposes.").

Even if the tax differential provisions of the Act were not a mandate from the Legislature but were instead a delegation of discretionary power to the Authority, these provisions still would not run afoul of the Ripper Clause. The Legislature's decision to redirect tax differentials generated within the jurisdictional land is within its taxing power, which it cannot relinquish to municipalities. Although the City claims it could use the tax differential more wisely than the Authority, that is not an issue the court has the power to correct. Even if the court harbors doubts about the wisdom or the fairness of the Legislature's decision regarding diversion of the tax differential, the court lacks the prerogative to set aside decisions made within the Legislature's broad policy making authority on the ground that the court finds the decisions objectionable for policy reasons.

II. Article XI, Section 8

The City brings a separate claim for declaratory relief under Article XI, Section 8 ("Section 8") of the Utah Constitution, under which the Inland Port Authority was established.

See Utah Code § 11-58-201. Both sides have sought summary judgment in their favor regarding that claim as well. Section 8 provides:

> The Legislature may by statute provide for the establishment of political subdivisions of the State, or other governmental entities, in addition to counties, cities, towns, school districts, and special service districts, to provide services and facilities as provided by statute. Those other political subdivisions of the State or other governmental entities may exercise those powers and perform those functions that are provided by statute.

Utah Const. Art XI, § 8. *See Metro. Water Dist. of Salt Lake & Sandy v. Sorf*, 2019 UT 23, ¶ 1, 445 P.3d 443 (holding Section 8 authorizes "quasi-governmental entities known as limited purpose local districts.").

In arguing that the City's residents who may be uniquely affected by inland port uses are without recourse to address their concerns through locally elected representatives, the City argues Section 8 should be read "in harmony" with Article XI, Section 7 ("Section 7") of the Utah Constitution. *See Univ. of Utah v. Shurtleff*, 2006 UT 51, ¶ 17, 144 P.3d 1109 ("When interpreting the constitution, we strive to harmonize constitutional provisions with one another and with the meaning and function of the constitution as a whole."); and *American Bush v. City of S. Salt Lake*, 2006 UT 40, ¶ 18, 140 P.3d 1235 ("conventional methods of constitutional interpretation [] dictate that when determining the meaning of a constitutional provision, other provisions dealing generally with the same topic assist us in arriving at a proper interpretation of the constitutional provision in question.") (internal citation and quotations omitted).

Section 7 permits the Legislature to authorize special service districts, but only "upon the assent of a majority of the qualified electors of the special service district," and a district may contain multiple cities or towns "but only with the consent of the governing authority of each city or town to be included in the special service district." Utah Const. Art XI, § 7. The City argues Section 7 indicates a constitutional intent that political subdivisions, or arms thereof,

should exist only at the behest of local residents. The City argues that unless the consent limitation of Section 7 is read into Section 8, there is nothing to stop the State from encircling, for example, a lucrative ski resort or a high-tech complex and taking control over the zoning to the State's benefit.

The court is not prepared to extrapolate language from Section 7, wherein special service districts for such services as municipal water or electricity are geographically local functions, and engraft them onto Section 8. The City has cited no cases suggesting this is a proper interpretation of Section 8, which on its face merely authorizes the Legislature to create political subdivisions but does not prohibit it from doing anything. To apply the same condition to Section 8's broad authority to create "political subdivisions of the State, or other governmental entities" would be contrary to the plain language of Section 8, which contains no such limiting language and is simply inapplicable in this case. The City's claim under Section 8 fails as a matter of law.

III. Article XI, Section 5

The City also asks the court to read the Ripper Cause in harmony with Article XI, Section 5 ("Section 5") of the Utah Constitution, and it brings a separate claim under this section. Section 5 states, in relevant part:

> The Legislature may not create cities or towns by special laws.
> . . .
> Each city forming its charter under this section shall have, and is hereby granted, the authority to exercise all powers relating to municipal affairs, and to adopt and enforce within its limits, local police, sanitary and similar regulations not in conflict with the general law, and no enumeration of powers in this constitution or any law shall be deemed to limit or restrict the general grant of authority hereby conferred; but this grant of authority shall not include the power to regulate public utilities, not municipally owned, if any such regulation of public utilities is provided for by general law, nor be deemed to limit or restrict the power of the Legislature in matters relating to State affairs, to enact general laws applicable alike to all cities of the State.

> The power to be conferred upon the cities by this section shall include the following:
>
> > To levy, assess and collect taxes and borrow money, within the limits prescribed by general law, and to levy and collect special assessments for benefits conferred.
> >
> > To furnish all local public services, to purchase, hire, construct, own, maintain and operate, or lease, public utilities local in extent and use; to acquire by condemnation, or otherwise, within or without the corporate limits, property necessary for any such purposes, subject to restrictions imposed by general law for the protection of other communities; and to grant local public utility franchises and within its powers regulate the exercise thereof.
> >
> > To make local public improvements and to acquire by condemnation, or otherwise, property within its corporate limits necessary for such improvements; and also to acquire an excess over than needed for any such improvement and to sell or lease such excess property with restrictions, in order to protect and preserve the improvement.

Utah Const. Art XI, § 5.

The City argues that in creating the Authority, the Legislature created the functional equivalent of a city by special law for the sole purpose of interfering with the City's constitutionally granted authority over its municipal functions and municipal monies. But the Authority is not a city or town; it is a special commission created by the Legislature, and therefore Section 5 does not apply. *See Tygesen*, 226 P.2d at 131 ("[T]he inhibitions of Sec. 5, Art. XI applied only to cities, towns, villages and subdivisions of these but did not apply to an arm of the government separate and distinct from a municipality"); *Freeman v. Stewart*, 273 P.2d 174, 176 (Utah 1954) (the Legislature may create non-municipal entities that are not subject to the restrictions of Section 5); *Mountain States*, 811 P.2d at 191 ("Section 5 does not prohibit the diversion of revenues raised in a county to effect a statewide purpose."); and *Tygesen*, 226 P.2d at 131 (stating that laws that apply "alike to all portions of the state and [are] made for the use and benefit of the inhabitants of all counties" do not offend Section 5).

Because the Authority is not a city or town and is not subject to Section 5, the court will not address whether the Authority was created by "special law."[17] The City's claim under Article XI, Section 5 of the Utah Constitution fails as a matter of law.

IV. Article I, Section 24: Uniform Operation of Laws[18]

The City contends the Act violates the Uniform Operation of Laws provision contained in Article I, Section 24 of the Utah Constitution. That provision states: "All laws of a general nature shall have uniform operation."

Describing the purpose of the Uniform Operation of Laws provision, the Utah Supreme Court has held as follows:

> The purpose of the uniform operation of laws provision is to prevent classifying persons in such a manner that those who are similarly situated with respect to the purpose of a law are treated differently by that law, to the detriment of some of those so classified. The essence of the uniform operation of laws principle is that legislative classifications resulting in differing treatment for different persons must be based on actual differences that are reasonably related to the legitimate purposes of the legislation. Persons similarly situated should be treated similarly, and persons in different circumstances should not be treated as if their circumstances were the same.

Merrill v. Utah Labor Comm'n, 2009 UT 26, ¶ 6, 223 P.3d 1089 (internal citations and quotations omitted). "Most classifications are presumptively permissible and thus subject to rational basis review." *In re Adoption of J.S.*, 2014 UT 51, ¶ 67, 358 P.3d 1009. *See State v. Robinson,* 2011 UT 30, ¶ 23, 254 P.3d 183 ("Broad deference is given to the Legislature when assessing the reasonableness of its classifications and their relationship to legitimate legislative purposes.").

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[17] The distinction between a special law and a general law is similar to the Uniform Operation of Laws clause, Article 1, Section 24, of the Utah Constitution. *Utah Farm Bureau Ins. Co. v. Utah Ins. Guar. Ass'n*, 564 P.2d 751, 754 (Utah 1977).

[18] A ripper clause and uniform operation of law clause are closely related. *See* Porter, *The Ripper Clause*, 1969 UTAH L. REV. 287, 291.

The State first argues that the City is not a person and therefore may not bring a claim under the Uniform Operation of Law clause. The City responds that it is not bringing a federal equal protection claim, which it acknowledges it lacks standing to assert. The court agrees the City has standing to bring a claim under the Uniform Operation of Law provision. *See West Jordan*, 767 P.2 at 536 n.4 (suggesting, hypothetically, a municipality might have a claim under the Uniform Operation of Law clause where a law's classification based on population size is unrelated to its purpose).

The City asserts the Act singles out three cities—Salt Lake City, Magna, and West Valley City—that are subject to the Act regardless of their consent, while any other municipality in the state may voluntarily become subject to the Act if it and the affected property owners consent. The mandatory provision states:

> (5)(a) No later than December 31, 2018, the ordinances of a municipality with authority jurisdictional land within its boundary shall allow an inland port as a permitted or conditional use. . . .
> . . .
> (7)(a)(i) A municipality whose boundary includes authority jurisdictional land shall provide the same municipal services to the area of the municipality that is within the authority jurisdictional land as the municipality provides to other areas of the municipality with similar zoning and a similar development level. . . .

Utah Code §§ 11-58-205(5) and -205(7)(a)(i). The discretionary provision for municipalities and counties other than Salt Lake City, Magna, and West Valley City, provides:

> (2)(a) The board may adopt a project area plan for land that is outside the authority jurisdictional land, as provided in this part, if the board receives written consent to include the land in the project area described in the project area plan from:
> (i) as applicable:
> (A) the legislative body of the county in whose unincorporated area the land is located; or
> (B) the legislative body of the municipality in which the land is located; and
> (ii) the owner of the land.

Id. at § 11-58-501(2)(a).

The State argues the classification the City complains of does not violate the Uniform Operation of Law provision because it is reasonably related to permissible legislative purposes. The court should consider three factors: (1) whether the classification is reasonable, (2) whether the objectives of the legislative action are legitimate, and (3) whether there is a reasonable relationship between the classification and the legislative purposes. *Merrill*, 2009 UT 26 at ¶ 9.

The first *Merrill* consideration is whether the classification is reasonable. For this, the court should look at the following factors: "(1) if there is a greater burden on one class as opposed to another without a reason; (2) if the statute results in unfair discrimination; (3) if the statute creates a classification that is arbitrary or unreasonable; or (4) if the statute singles out similarly situated people or groups without justification." *Id.* at ¶ 10. The Act does place a greater burden on the three cities than on other municipalities within the state in that it deprives those three cities of any choice as to whether they will be subject to the Act. The Act requires the three cities to adopt mandatory zoning, and it preempts some of the cities' authority to regulate private property, develop infrastructure, and determine how to spend growth-related property tax. But the distinction is not unfair, arbitrary, unreasonable, or unjustified. The classification is based on actual differences that are reasonably related to the legitimate purposes of the Act.

The three cities currently subject to the mandatory provisions of the Act are not similarly situated to other municipalities because those cities have within their borders portions of the jurisdictional land. These municipalities serve as the primary location of the inland port, and it is not an unreasonable distinction for the Legislature to require only municipalities containing jurisdictional land within their boundaries to conform to the purposes of the Act in order for the

inland port to achieve the purposes argued by the State. It is not unreasonable for the Legislature to determine that municipalities that lack jurisdictional land within their boundaries are not as crucial as Salt Lake City, Magna, and West Valley City to achieving the objectives of the inland port. If, for example, the city of St. George were to opt out of the jurisdiction of the Act despite a request from the State, the State's objectives for the inland port will likely not be significantly thwarted. But because the inland port jurisdictional land lies mainly within Salt Lake City's borders, it is important for purposes of the Act that Salt Lake City, where the proposed inland port would have its epicenter, not be permitted to opt out of the Act.

The next *Merrill* factor is whether the Legislature had a legitimate objective in creating the classification. The State points to the language of the Act setting forth policies and objectives, including to: maximize long-term economic benefits to the region and state; maximize creation of high-quality jobs; take advantage of the strategic location and proximity to transportation and other infrastructure and facilities; facilitate the transportation of goods; and promote land uses on jurisdictional land that generate economic development including warehousing, light manufacturing, and distribution facilities. Utah Code § 11-58-203(1).

The court will not rely solely on the stated goals of the Act but considers for itself whether the distinction between Salt Lake City, Magna, and West Valley City, on one hand, and other subdivisions of the State, on the other hand, is a legitimate objective, bearing in mind the required deference toward finding the Act to be constitutional. *See Merrill,* 2009 UT 26 at ¶ 18 ("We do not, however, 'accept any conceivable reason for the legislation. . . . Rather, we judge such enactments on the basis of reasonable or actual legislative purposes.'") (citation omitted); and *Drej*, 2010 UT 35 at ¶ 9 ("we resolve any reasonable doubts in favor of constitutionality") (citation omitted). The City acknowledges economic welfare is a legitimate governmental

objective. *See Sun Valley Water Beds of Utah, Inc. v. Herm Hughes & Son, Inc.*, 782 P.2d 188, 191 (Utah 1989) (To facilitate the legislative interest in promoting the social and economic welfare of the populace."); and *Baker v. Matheson*, 607 P.2d 233, 243 (Utah 1979) (holding there was no due process violation where a legislative act's general "objective was to improve the economic welfare and well-being of the State as a whole"). The Act's objectives, as reflected in its "policies and objectives" section, Utah Code § 11-58-203(1), are legitimate state objectives for the economic benefit of Utah residents.

The third and most critical question is whether the Legislature chose a permissible means to achieve legitimate ends. *See Blue Cross & Blue Shield of Utah v. State*, 779 P.2d 634, 641 (Utah 1989). The City argues that the Act unfairly burdens its residents with the State's $860 million cost to relocate the Utah State Prison, and the Act's 40-year property tax differential obligation will far exceed the prison relocation costs. Even if that is the case, the Legislature has the ability to deflect county and municipal tax income. *Id. at* 637 ("In the tax area, as in other areas of purely economic regulation, we give broad deference to the legislature when scrutinizing the reasonableness of its classifications and their relationship to legitimate legislative purposes.").

The provisions of the Act that single out the City regarding land-use, zoning, and property tax differentials are a permissible means of achieving the goals of the Act. *See* Utah Code § 11-58-201(3) (stating the purpose of the Authority is to fulfill a statewide public purpose to facilitate development of the jurisdictional land and other locations to maximize long-term economic and other benefits for the state, and that the duties are beyond the scope and capacity of any one municipality). To the extent Salt Lake City, Magna, and West Valley City are treated differently under the Act, that is because they contain jurisdictional land within their borders, and

it is therefore reasonable for the Act to treat them differently than municipalities that lack jurisdictional land.

V. Motion for Preliminary Injunction

The City has filed a motion for a preliminary injunction asking the court to enjoin the State's implementation of the Act pending the outcome of this litigation. That motion has been fully briefed and was also before the court for consideration at the oral argument conducted November 18, 2019. A party seeking preliminary injunctive relief bears the burden of demonstrating to the court's satisfaction that (1) "[t]he applicant will suffer irreparable harm unless the order or injunction issues," (2) "[t]he threatened injury to the applicant outweighs whatever damage the proposed order or injunction may cause the party restrained or enjoined," (3) "[t]he order or injunction, if issued, would not be adverse to the public interest," and (4) *"[t]here is a substantial likelihood that the applicant will prevail on the merits of the underlying claim, or the case presents serious issues on the merits which should be the subject of further litigation."* Utah R. Civ. P. 65A(e) (emphasis added). These elements are conjunctive in nature, meaning the court must deny a request for preliminary injunctive relief if the applicant fails to make any one or more of the showings required in Rule 65A(e).

The court has determined that the State is entitled to summary judgment in its favor and against the City on all of the City's claims challenging the Act's constitutionality. It necessarily follows from this determination that the City has not persuaded the court that there is a substantial likelihood it will prevail on the merits of its underlying claims. It further follows that the City cannot make a showing that the case presents issues "which should be the subject of further litigation," given that the court's summary judgment order concludes the litigation of the City's claims at the trial court level. Thus, given the court's ruling, the City necessarily cannot

make the showing required in Rule 65A(e)(4) of the Utah Rules of Civil Procedure, and its motion for preliminary injunctive relief must be denied.

CONCLUSION

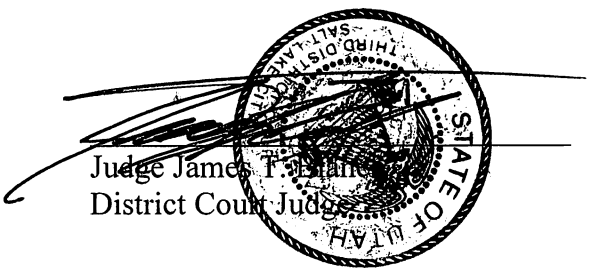
Based upon the undisputed material facts recited above, the court concludes, as a matter of law, as follows:

1. The Utah Inland Port Authority Act, Utah Code § 11-58-101, *et seq.* (the "Act"), does not violate Article VI, Section 28 of the Utah Constitution (the "Ripper Clause") regarding land-use zoning, municipal functions, or municipal monies;
2. The Act does not violate Article XI, Section 5 of the Utah Constitution;
3. The Act does not violate Article XI, Section 8 of the Utah Constitution;
4. The Act does not violate the Article I, Section 24 of the Utah Constitution; and
5. These holdings necessarily require denial of the City's Motion for Preliminary Injunction.

For the above reasons, the court GRANTS the State's cross-motion for summary judgment, DENIES the City's motion for summary judgment, and DENIES the City's Motion for Preliminary Injunction.

IT IS SO ORDERED.

DATED this 8th day of January, 2020.



Judge James T. Blanch
District Court Judge

CERTIFICATE OF NOTIFICATION

I certify that a copy of the attached document was sent to the following people for case 190902057 by the method and on the date specified.

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Date: 01/08/2020

/s/ SIRARPI OGANESYAN

Signature