MINUTES

SUMMIT COUNTY
BOARD OF COUNTY COUNCIL
WEDNESDAY, FEBRUARY 5, 2020
SHELDON RICHINS BUILDING
PARK CITY, UTAH

PRESENT:

Doug Clyde, Council Chair
Glenn Wright, Council Vice-Chair
Roger Armstrong, Council Member
Kim Carson, Council Member

Tom Fisher, Manager
Janna Young, Deputy Manager
Dave Thomas, Chief Civil Deputy
Margaret Olson, Attorney
Kent Jones, Clerk

Council Member Robinson was excused from the meeting today. The Council was called to order at 2:10 p.m.

Closed Session – Personnel and Property Acquisition

Council Member Armstrong made a motion to convene in closed session to discuss personnel. The motion was seconded by Council Member Carson and passed unanimously, 4 to 0.

The Summit County Council met in closed session from 2:11 p.m. to 2:56 p.m. to discuss personnel. Those in attendance were:

Roger Armstrong, Council Chair
Doug Clyde, Council Vice-Chair
Glenn Wright, Council Member
Kim Carson, Council Member

Brian Bellamy, Personnel Director

Council Member Armstrong made a motion to leave session to discuss personnel and convene in closed session to discuss property acquisition. Council Member Carson seconded and all voted in favor, 4-0.

The Summit County Council met in closed session from 2:56 p.m. to 3:21 p.m. to discuss property acquisition. Those in attendance were:

Roger Armstrong, Council Chair
Doug Clyde, Council Vice-Chair
Glenn Wright, Council Member
Kim Carson, Council Member

Tom Fisher, Manager
Annette Singleton, Executive Assistant
Dave Thomas, Chief Civil Deputy
Margaret Olson, Attorney
Council Member Armstrong made a motion to leave closed session to discuss property acquisition and convene in open session. Council Member Carson seconded the motion and all voted in favor, 4-0.

Work Session

Pledge of Allegiance

Presentation by Communities That Care; Mary Christa Smith

Mary Christa Smith, Communities That Care Coordinator, reviewed the following presentation and answered any questions posed by the Council.
COMMUNITIES THAT CARE

2020

Hearts and Hands together.
Sparking a revolution in mental wellness & youth substance abuse prevention.
HEARTS & HANDS TOGETHER
COMMUNITIES THAT CARE COALITION
Bringing our community together around mental wellness & youth substance abuse prevention.

All of us
ARE IMPORTANT
CONTRIBUTORS

OUR
PRIMARY TASK
IS TO
SUPPORT
THE WELLBEING OF OUR
YOUNG PEOPLE.

Spark a revolution,
be innovative.
GET THEIR
ATTENTION!

All Of Us For
The Mental Well-being
For The Families of
Summit County, Utah

Helping the youth of
Summit County thrive in
safe & caring spaces.

Collaboration
is key to our
success

We don’t just talk
WE ACT

COMPASSION • COLLABORATE • INNOVATE • EDUCATE
Communities That Care Coalition – Who We Are

CTC is the prevention hub of the Mental Wellness Alliance with a mission to prevent youth substance use and suicide. We are comprised of dozens of Summit County partner organizations who work towards our shared goals of healthy Summit County youth.

Communities That Care Coalition - What We Do

We facilitate and lead a collaborative, community-wide process to select priority risk and protective factors to drive strategy and tactics as a coalition and within individual organizations.
Communities That Care Coalition - Why

Simply put, we have rates of youth substance use and mental illness in our community that are unacceptably high and the issues we face can only be solved in partnership and collaboration.
Communities That Care Coalition – How

- Education of parents, partners and youth
- Ongoing data assessment
- Professional development
- Elevating the YOUTH voice
- Collaborative programming
- Skillful communications strategy
What is the SHARP survey?

- SHARP stands for Student Health and Risk Prevention.
- The SHARP survey is administered every other year, to students across Summit County in grades 6, 8, 10 and 12.
- The survey measures:
  - Substance use
  - Antisocial behavior
  - Community and school climate and safety
  - Social and emotional health
  - Physical health and safety
  - Risk and protective factor profiles
How do we use the SHARP survey?

- Creation and tracking our North Star
- Alignment of coalition member around shared goals, strategy, programs and initiatives
- Fundraising – grants at the local, state and federal level
- Assessment of impact
Workgroup Members

- Carolyn Rose – Chair
- Kena Rydalch – South Summit School District
- Julie Marsh – North Summit School District
- Alison Vallejo – Park City School District
- Ben Belnap – Park City School District
- Kathy Day – Summit County
- Katherine Wilson – Summit County
- Inge Travis
- Ken Kullack – Alliance marketing consultant
- Jake Steenblik – Summit County nursing intern
- Mary Christa Smith – CTC Coordinator
Data Stories

2019 SHARP data

Hearts and Hands together.

Sparking a revolution in mental wellness & youth substance abuse prevention.
Priority Risk Factor #1
Perceived Risk of Substance Use
Data stories and problem behaviors
Alcohol Use Increase

All Grades

Lifetime use increased from 20.8% to 27.3%

All Grades

Past 30-day use increased from 9.4% to 13.1%
Marijuana Use Increase

All Grades
Lifetime use increased
From 12.1% - 15.9%

All Grades
Past 30-day use increased
From 5.4% - 8.3%
Vaping Increasing

All Grades

Lifetime use increased
From 14% - 22%

All Grades

Past 30-day use increased
From 5.6% - 12.5%
Binge Drinking Increase

All Grades from 4.2% to 8.4%
Good news!

Prescription Sedative Use Declining

All Grades

Lifetime use decreased From 2.3% to 1.6%

All Grades

Past 30-day use decreased From .8% to .4%
Priority Risk Factor #2
Parental Attitudes Favorable Towards Substance Use and Anti-Social Behavior
Drinking at home with parents permission

All Grades
Declining from 67.7% to 52.1%

Drinking at someone else's home with their parent's permission
All Grades increased
From 22.9% to 32.1%

During the past year, how many times (if any) did you...

| At my home with my parent's permission | At someone else's home with their parent's permission |
Priority Risk Factor #3

Depressive Symptoms
Depressive Symptoms
Mixed indicators

- An increasing number of students are talking to adults about feeling sad, hopeless, depressed or suicidal.
- Moderate depressive symptoms rates are falling.
- High depressive symptoms rates are rising.
- 8th graders had increasing rates of feeling suicidal, while 10th and 12th graders had falling rates.

The University of Utah Health Plans contract with the County has dramatically increased the number of mental health providers available through school based services.
Priority Protective Factor

Data Workgroup Recommendation:
• The lowest protective factor county wide is “rewards for pro-social involvement” in the COMMUNITY domain.
Rewards for pro-social involvement in the community

- "My neighbors notice when I am doing a good job and let me know about it."
- "There are people in my neighborhood who are proud of me when I do something well."
- "There are people in my neighborhood who encourage me to do my best."

Protective Factor: We Recommend for Priority Focus
Presentation regarding Summit County Sheriff's Office Drug Court and Probation Program; Felicia Sotelo and Andy Crnich

Felicia Sotelo and Andy Crnich, from the Sheriff's Office, reviewed the following information and gave the Council an update regarding the Drug Court and Probation Program.
Summit County Sheriff’s Office Drug Court Probation Program
In the beginning....

- With assistance from the County Attorney’s Office we drafted a probation contract.
- Justice Court and District Court started assigning people to “Summit County Probation.”
- By the end of 2016 we had 10 people on probation – not including drug court.
First Year – 2017

- By the end of 2017 and in addition to Drug Court we had approximately 70 offenders added to our program.
- Cases range from DUI, Domestic Violence, Stalking, Intoxication, Assault. Mostly Class A and below. Some felonies.
- Drug court also continued to grow.
Second Year – 2018

- We got an office that was perfect! Within the Justice Court building but accessible to everyone.
- This made it much easier to have people come to our office to check in, UA, pay fees, etc.
- Caseloads expanded. Drug Court expanded.
- Between two detectives we had about 95 offenders.
- Still no good software. Difficulty tracking data.
Third Year – 2019

- We recently obtained some good case management software – (Tyler Supervision)
- We can now track all the data we need: caseloads, recidivism, demographics, frequency of offender contact, etc.
- We have approximately 64 offenders on our case load – this fluctuates.
2020 and Beyond.....

- Keeping caseloads at a manageable level
- Working with the legislature to provide some relief to county probation providers for violations.
Offender Requirements

- Must live within our County – we have made some exceptions to this however not always successful.
- Must be willing to be supervised.
- Must obtain/maintain stable housing
- Must obtain/maintain employment
- Honesty
Why we are excelling....

- Holistic approach.
- Daily contact with our offenders. We gain excellent rapport with each person. We get to know them, their family, their socioeconomic status, etc.
- Ensuring basic needs are met.
- Go between for the offender and the Court.
- Direct contact with Judges, Attorney’s, and Therapists via cellphones.
- Communication between all involved.
- Dedicated team....everyone involved is bought in.
- Ability to assist other divisions/agencies with offender location and cooperation.
Relationship with Treatment

- We ask all of our offenders to sign releases of information for treatment to speak to us.
- We don’t ask for trauma history or content of individual sessions.
- Treatment grants us access to UA results.
- Notifies us immediately of any missed appointments or groups.
- We work extremely close with treatment – we have weekly meetings and are in contact via text and email daily.
Community Partners

- Some employers in the county have agreed to hire our offenders. We are always seeking more employers that are willing to give a second chance. This is often obtained by us using a “boots on the ground” approach – we walk in and ask....

- Summit County Recovery Foundation – basic needs (clothing, phone, toiletries) housing on a case by case basis. Always accepting donations (drug court specific)

- The public at large.
Funding

- Probation Budget in the Sheriff's Office for ongoing costs: wages, uniforms, equipment, etc.

- Medicaid - we try to get everyone we can on Medicaid to help them pay for treatment.
Summit County Challenges

- Transportation in the rural areas – especially challenging for those that lose their license.
- Treatment options in the rural areas of the county.
- No detox or inpatient services in County
- Affordable Housing
- Costs of Treatment – during and after
- Staffing – We need more people to continue to grow.
Probation Stats to Date

- Total: 251
- Successful Termination: 170
- Unsuccessful: 30
- Deaths: 7 (2 suicides; 5 overdoses)
- Reoffended: 34
- Recidivism Rate: 12%
- Current: 51 – not counting drug court
Drug Court Stats to Date

Graduated: 31
Current participants: 13
Did not graduate: 15
Deceased: 3
Observing: 2
Transferred: 5
Relapsed: Approximately 20
What can we do better?

- More staffing for our Probation program – Detectives
- Swifter sanctions for violations – 72 hour hold for certain violations
- Support from the DMV and allowing limited driver’s license provisions.
- Substance Abuse/Domestic Violence treatment in the rural areas of the county – (space and staffing).
- Justice Court Specialty Court? DUI, mental health, veterans court?
Bridge for Aftercare

- Many completed participants are relapsing
- Lack of change in gainful employment
- Working on making those life changes during participation – friends, work, etc.
- Access to aftercare – after court ordered is done.
- Substance Abuse users need regular “check-ups” just like any other disease.
- Stigma around relapse.
Legislative update; Janna Young and Kim Carson

Janna Young, Deputy Manager, and Council Member Carson reviewed the following staff report and updated the Council regarding the 2020 Utah State Legislature.

STAFF REPORT

To: Summit County Council
From: Janna Young, Deputy County Manager
Date of Meeting: February 5, 2020
Type of Item: Weekly Legislative Update
Process: Work Session

During the 2020 general session of the Utah State Legislature, staff, along with Councilmember Kim Carson, will provide the County Council weekly updates on the issues and activities the County is monitoring at the State Capitol.

Requested Council Action
None.

Background
On Monday, January 27, 2020, the general session of Utah’s 64th legislature began and will run until Thursday, March 12, 2020. Over the next 45 days, Summit County’s internal legislative working group will track activity at the State Capitol and provide updates to the County Council.

The County’s legislative working group is comprised of the County Assessor, Auditor, Clerk, (2) Councilmembers, Recorder, Treasurer, Health Department Director, Chief Financial Officer, Community Development Director, Economic Development Director, Transportation Planning Director, County Manager, Deputy County Manager, and representatives from the County Attorney’s Office and Sheriff’s Office.

This group meets weekly to monitor bills, share information, decide county positions on legislation, participate in Utah Association of County’s (UAC) weekly policy coordinating meetings, work closely with the county’s House and Senate members and the county’s lobbyist on issues, attend committee meetings, and potentially testify before committees, if appropriate.

Each week at the County Council meeting, Councilmember Kim Carson, Deputy County Attorney, Jami Brackin, and Deputy County Manager, Janna Young will report to the Council on these activities, and request input on issues and support for proposed county positions on bills.
2020 Legislative Session

Expectations
While it is difficult to predict the tone and tenor of the legislative session at this point in time, we can expect tax reform and the budget to be defining characteristics.

Tax Reform
In 2019, the Legislature met in special session to pass tax reform legislation (SB 2001) in an attempt to address a structural challenge in state revenues that has seen tremendous growth in income tax (near a billion dollar surplus) but decreases in sales and gas taxes, negatively impacting the state’s general fund, which pays for myriad of things, such as roads, law enforcement, fire departments, corrections/prisons, social services, and many other critical services. (Note: the state constitution earmarks 100% of income taxes for k-12 education and higher education spending).

The new law quickly met with public indignation, primarily around restoration of the full sales tax on food and other measures that seemed targeted at low income Utahns. A petition campaign ensued to collect signatures to put on the November ballot the question of whether to retain or overturn the new law. On January 28, 2020, the Lt Governor’s Office confirmed enough signatures had been certified for the ballot.

Due to the uncertainty of whether or not voters would overturn the legislation and the complexity of putting together the state budget in only 45 days, the Governor and legislative leadership decided to repeal the tax reform law (HB 185), which they officially did with only 6 dissenting votes on January 28, 2020. The Governor signed the repeal bill on January 29th.

The Governor has indicated he is not interested in pursuing tax reform this legislative session. He feels we are about 2 years away from when the general fund shortfall will be a serious problem.

While tax reform as an omnibus package is not expected this session, we do anticipate seeing individual bills to pass portions of SB 2001, such as Rep. Tim Quinn’s bill to restore the child/dependent exemption that was eliminated by federal tax reform, causing many families in the State of Utah to see an over 200% tax increase.

Budget
As a consequence of repealing the tax reform bill, the state budget will be $45 million underwater, making appropriations requests much more difficult to fulfill this year. The Legislature has about $120 million of discretionary spending in the
general fund to allocate to projects and programs in the next fiscal year. One request involving Medicaid that we know of is around $45 million, illustrating how competitive it will be for counties to get anything funded this year.

Summit County supports UAC’s appropriations requests to continue to fund grants for indigent defense, and for additional staffing at the State Tax Commission for audits, collections and compliance. We know there are deficiencies at the Tax Commission due to a lack of resources, and it is very likely, municipalities, counties and the state are not receiving all the taxes that should be remitted to them.

**Summit County’s Proactive Initiatives**
Due to a successful 2019 session, Summit County is not expecting to run any bills this session at this time.

**Notable Dates**
- January 27 - Legislative Session Begins
- January 30 - County Officials Day on the Hill
- February 19 - GOED’s Rural Day on the Hill
- March 10 - Final action must be taken on each appropriations bill
- March 12 - Last Day of the Session
- May 12 - Effective date for bills
- Every Thursday During Session – UAC Legislative Committee Meetings
  (10am, Olmstead Room in Senate Building)

**Engagement, Access and Transparency**
Interested citizens can watch Utah’s 2020 legislative session in real time or access archived materials through the Legislature’s online tool. To access this tool, go to [https://le.utah.gov/](https://le.utah.gov/) and click on the “calendar” button. Click on the desired meeting and the committee webpage will have links to materials and the audio/video recording.

Additionally, the Legislature’s website allows citizens to sign up to follow individual bills and receive email alerts whenever action is taken on the measure. To sign up for alerts, go to [https://le.utah.gov/](https://le.utah.gov/); click on the “Bills” tab at the top of the page. Then either perform a bill request or keyword search. Once locating the desired bill, click on either the “Track this” or “Email notification” button underneath the photograph of the bill sponsor.

The website for each individual bill also provides the bill text, status information, audio/video of any committee hearings or floor debate, and details on the bill sponsor.
**Issues the County is Monitoring**

**Economic Development:**
Similar to past legislative sessions, we expect to see a number of bills to modify the redevelopment agency act.

Secondly, we anticipate a second attempt, after failing last session, by the Governor’s Office of Economic Development (GOED) to consolidate all the rural economic development programs into one grant fund with the justification that it better streamlines the programs and makes more counties and cities eligible for them.

**Housing:**
We anticipate seeing several bills to amend the comprehensive housing bill from the prior legislative session, particularly related to restoring funding to the program. Commitments made in the past to fund the program at $10 million are waning in light of the tax reform repeal and consequently, reduction in anticipated revenues to the general fund this year.

**Land Use:**
Summit County staff, through the Land Use Task Force, worked all during interim session with the Homebuilders Association, lawmakers, and other stakeholders on major revisions to the subdivision rules, attempting to simplify the subdivision and amendment processes, which we expect Rep. Logan Wilde to sponsor this session.

**Public Health:**
We are expecting to see multiple bills addressing vaping and e-cigarettes this session, including a bill from Senator Alan Christensen who represents Summit County. The County’s Health Department supports efforts to restrict access to vaping and e-cigarettes by youth.

**Bills the County is Monitoring**
Below is a list of the bills and issues the County is currently following/monitoring:

**HB 10, Boards and Commissions Amendments (Roberts)**
*Status:* House Rules Committee
This bill repeals, places sunset provisions on, and amends provisions related to certain boards and commissions. Summit County is concerned that the bill repeals the advisory board for the Children’s Justice Center Program, Land Use and Eminent Domain Advisory Board, State of Utah School and Institutional Trust Fund Nominating Committee, among many others.
HB 92, Fire Amendments (Snider)
*Status*: House Rules Committee
This bill makes it easier to prescribe burns in forest areas by relaxing compliance with weather service clearing index concerns. This could be good for forest health and fire protection but could also cause some issues concerning air quality. Park City Fire District did not have any concerns with the bill.

HB 98, Offenses Against the Administration of Government Amendments (Hall)
*Status*: Assigned to the House Government Operations Committee
This bill aims to clarify the bill adopted last session concerning personal use of public property by city and county employees. The Summit County Attorney’s Office has been working on the language for this bill with other county attorneys and the bill sponsor. Specifically, the bill provides an exception for the *de minimus* use of public property by a public servant, covers volunteers, and addresses the felony penalties. We believe these clarifications are necessary to both protect employees and the public interest in property purchased with public funds.

HB 112, Initiative Protection Act (Romero)
*Status*: House Rules Committee
This bill provides that, if the Legislature repeals or materially amends a voter-approved initiative, the repeal or amendment does not take effect unless and until approved by the voters.

HB 133, Eminent Domain Amendments (Winder)
*Status*: House Rules Committee
This bill allows for eminent domain for recreational trails meeting certain criteria.

HB 138, Transportation Corridor Preservation Amendments (Andersen)
*Status*: Assigned to the House Transportation Committee
This bill establishes certain notice requirements before the Department of Transportation, a county, or a municipality purchases property for corridor preservation on a voluntary basis.

HB 164, Property Tax Notifications Amendments (Moss)
*Status*: Assigned to the House Revenue and Taxation Committee
This bill requires a property tax notice to include additional information, including the taxable value of the property, the deadline to appeal the valuation or equalization of the property, information related to the residential exemption, and information related to a rate increase resulting from a change to state law.
HB 198, Eminent Domain Limitations (Pulsipher)
Status: House Rules Committee
This bill prohibits a person from exercising the right of eminent domain for the purpose of establishing a public park on certain century farm property, and consolidates uses for which the eminent domain right may not be exercised.

SB 50, Clean Energy Act Amendments (Anderegg)
Status: Assigned to the Senate Government Operations and Political Subdivisions Committee
This bill enacts definitions in the Commercial Property Assessed Clean Energy Act. The interest Summit County has in this legislation is electric vehicles are exempted from commercial personal property tax in the bill.

Consideration of Approval

Discussion and possible adoption of Ordinance 800-A, Amendments to Summit County Code, Title 7, Chapter 1, which governs the use of the County's rights-of-way; Dave Thomas and Michael Kendell

Brandon Brady, from the County Engineer's Office, and Dave Thomas, Chief Civil Attorney, reviewed the following presentation and requested approval of an amendment to County Code Title 7, Chapter 1 which governs the use of County rights-of-way and details use with respect to franchise agreements. This amendment would require adoption by Ordinance.
Key State Statutory Law and Interpretation


(1) A county may grant franchises along and over the public roads and highways for all lawful purposes, upon such terms, conditions, and restrictions as in the judgment of the county legislative body are necessary and proper, to be exercised in such manner as to present the least possible obstruction and inconvenience to the traveling public.

(2) A franchise under Subsection (1) may not be granted for a period longer than 50 years.

UCA §17-50-309. Regulation of use of roads.

A county may enact ordinances and make regulations not in conflict with law for the control, construction, alteration, repair, and use of all public roads and highways in the county outside of cities and towns.

State v. Hutchinson, 624 P.2d 1116, 1126 (Utah 1980) ("When the State has granted general welfare power to local governments, those governments have independent authority apart from, and in addition to, specific grants of authority to pass ordinances which are reasonably and appropriately related to the objectives of that power, i.e., providing for the public safety, health, morals and welfare. And the courts will not interfere with the legislative choice of the means selected unless it is arbitrary, or is directly prohibited by, or is inconsistent with the policy of, the state or federal laws or the constitution of this State or of the United States.")
## Common Law and other Federal and State Statutes

**Union Pacific Railroad Co. v. Public Service Commission**, 134 P.2d 469 (Utah 1943) (Public Service Commission does not have authority to alter a franchise agreement)

**Metro. Water Dist. v. Questar Gas Co.,** 361 P.3d 709 (Utah App 2015) (County legislative body exercises exclusive jurisdiction to regulate and manage its rights-of-way)

**Mountain States Telephone and Telegraph Company v. Salt Lake County,** 702 P.2d 113, 118 (Utah 1985) (franchise fees are limited to the actual cost of regulation and not for purposes of revenue)

**Telecommunications Act of 1996, 47 USC §253** (preempts state law; local franchising authority may require “fair and reasonable compensation from telecommunication providers” for use of the public right-of-way)

**National Cable Telecommunications Assoc. v. Brand X,** 125 S.Ct. 2688 (2005) (Internet service providers are not a telecommunications service; thus are not subject to the franchise fee under the Telecommunications Act of 1996)

**Small Wireless Facilities Deployment Act, UCA §54-21-101, et. seq. (2018)** (Allows small wireless facilities on utility poles within the public rights-of-way and limits the amount of franchise fees on them)

**Federal Cable TV Act of 1992, 47 USC §242** (preempts state law; grants local franchising authority power to charge a franchise fee up to 5% of gross revenues for Cable TV)
COUNTY RIGHTS-OF-WAY

- Class B County Roads (paved or gravel roads)
  - **339.28 road miles**
- Class D County Roads (unpaved roads)
- Right-of-Way widths:
  - Arterial Roads (60-120 feet with 24-60 feet of pavement)
  - Collector Roads (50-60 feet with 24-32 feet of pavement)
  - Residential Street (50-60 feet with 20-24 feet of pavement)
- County Council is the Highway Authority (UCA §72-1-102(8); §72-3-103)
PURPOSE OF A FRANCHISE

- Purpose of a Franchise is four-fold:

  - **Management:** County Engineer manages the County rights-of-way by policing capacity through encroachment and/or excavation permits.

  - **License:** Provides a license to the utility or telecommunication service to use the rights-of-way under specific conditions.

  - **Costs:** Helps to defray the costs of managing rights-of-way through a Franchise Fee.

  - **Consumer Service Standards:** Provides customary minimum service standards to protect the citizens of Summit County.
Current Summit County Code

- County rights-of-way are utilized by Private Utilities, Public Utilities, and Telecommunication Service Providers (Cable TV and Internet Service Providers).
- Private Utilities, Public Utilities, and Telecommunication Service Providers must have a franchise agreement.
- All franchisees must pay a franchise fee unless exempted by state or federal law.
- Private Utilities must demonstrate that they made a good faith effort to acquire private easements before requesting a franchise agreement.
- All franchisees must obtain an excavation permit to work within the County rights-of-way.

Historical Practice

- Dominion Energy, Rocky Mountain Power, Mountain Regional Water, and Telecommunication Service Providers have signed franchise agreements. Currently, in negotiations with SA3 for an interlocal agreement which includes elements of a franchise agreement.
- No Private Utilities have franchise agreements (about 15 entities). Instead, they were issued excavation permits to work within the County rights-of-way. There are no current local regulations governing their use within the rights-of-way. Private Utilities are resistant to signing a franchise agreement.
- Rocky Mountain Power (administrative fee) and Telecommunication Service Providers (5% fee per federal law) pay a franchise fee.
- Internet Service Providers are exempt from paying a franchise fee under federal law. Mountain Regional does not pay a franchise fee, as it is to be included in the excavation permit fees for water utilities (which is what the water utilities wanted).
- County Engineer manages the County rights-of-way, but has no GIS information as to where utilities are currently located within the rights-of-way.
PROPOSAL: "CLASS A" & "CLASS B" FRANCHISES

Class A Franchise
- Franchise Agreement (term of years)
- Pay Franchise Fee
- Subscriber Service Standards
- GIS mapping
- Excavation Permit required (no bond required)
- Insurance

Class B Franchise
- No Franchise Agreement
- No Franchise Fee
- No Subscriber Service Standards
- GIS Mapping
- Excavation Permit required (bond is required)
- Revocable License
- Indemnification
ADVANTAGES OF A "CLASS A" FRANCHISE

- Non-Revocable
- Priority
- Non-Interference Covenant
- Extended Relocation Deadlines
- Protection from Relocation Claims
- Waiver of Bonds
Summit County Ordinance No. 800-A

An Ordinance Amending Title 7, Chapter 1 of the Summit County Code relating to Use of County Rights of Way

PREAMBLE

WHEREAS, in accordance with UCA §72-1-102(8) and §72-3-103, the Summit County Council (the “Council”) is the Highway Authority over all Class B and Class D public roads and rights-of-way within the unincorporated Summit County (the “County”); and,

WHEREAS, in Metro. Water Dist. v. Questar Gas Co., 361 P.3d 709 (Utah App. 2015), the Utah Court of Appeals determined that the Council, as the County legislative body, exercises exclusive jurisdiction to regulate and manage its rights-of-way; and,

WHEREAS, UCA §17-50-306 provides that a “county may grant franchises along and over the public roads and highways for all lawful purposes, upon such terms, conditions, and restrictions as in the judgment of the county legislative body are necessary and proper;” and,

WHEREAS, the purpose of a franchise is four-fold: (a) to manage the rights-of-way, (b) to grant permission to a utility or telecommunications service provider to use the rights-of-way, (c) to defray the costs associated with the management of the rights-of-way through a franchise fee, and (d) to ensure that County residents receive a customary minimum level of service from the utility or telecommunications service provider who utilizes the County rights-of-way; and,

WHEREAS, UCA §17-50-309 further provides that a county may enact laws (through its police powers) for the “control, construction, alteration, repair, and use of all public roads and highways;” and,

WHEREAS, in State v. Hutchinson, 624 P.2d 1116 (Utah 1980), the Utah Supreme Court held that within the context of the police powers exercised by a county “courts will not interfere with the legislative choice of the means selected unless it is arbitrary, or is directly prohibited by, or is inconsistent with the policy of, the state or federal laws or the constitution of this State or of the United States;” and,

WHEREAS, the Small Wireless Facilities Deployment Act, UCA §54-21-101, et. seg. (2018), the Telecommunications Act of 1996, 47 USC §253, and the Federal Cable TV Act of 1992, 47 USC §242, encroach into the police powers of the Council in the management of its rights-of-way, and, therefore, any County regulations must account for such encroachments; and,

WHEREAS, the existing Title 7, Chapter 1 of the Summit County Code requires revision to address various classes of franchisees and to ensure that the Small Wireless Facilities Deployment Act is fully integrated into County regulations; and,
WHEREAS, it is in the best interests of the County to amend Title 7, Chapter 1 of the Summit County Code so as to protect the public health, safety, and welfare of its residents;

NOW, THEREFORE, the County Council of the County of Summit, State of Utah, ordains as follows:

Section 1. Amendments. The amendments to Title 7, Chapter 1, Use of County Rights of Way, are adopted in accordance with Exhibit A herein.

Section 2. Severability. If any provision of this Ordinance or the application of any such provision thereunder to any person or circumstance, shall be held invalid by a court of competent jurisdiction, the remainder of this Ordinance or the application of such provision thereunder to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

Section 3. Effective Date. This Ordinance shall take effect fifteen (15) days after publication.

Enacted this 5th day of February, 2020.

ATTEST:

Kent Jones
Summit County Clerk

SUMMIT COUNTY COUNCIL

Doug Clyde, Chair

APPROVED AS TO FORM

David L. Thomas
Chief Civil Deputy

VOTING OF COUNTY COUNCIL:

Councilmember Carson  Aye
Councilmember Robinson  Excused
Councilmember Clyde  Aye
Councilmember Armstrong  Aye
Councilmember Wright  Aye
EXHIBIT A
Chapter 1
USE OF COUNTY RIGHTS OF WAY

7-1-1: LEGISLATIVE FINDING:
7-1-2: AUTHORITY:
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7-1-1: LEGISLATIVE FINDING:

It is the specific finding of Summit County that all "county rights of way", where the county council is the highway authority, are and were acquired for the purposes of:

A. Transporting people and animals through Summit County.

B. Conveying transmission facilities of utilities or telecommunication services to developed or developing areas within Summit County. (Ord. 800, 3-6-2013)

7-1-2: AUTHORITY:

Summit County may grant franchises along and over the public roads and highways for all lawful purposes, upon such terms, conditions, and restrictions as in the judgment of the county council are necessary and proper, to be exercised in such manner as to present the least obstruction and inconvenience to the traveling public. Utah Code Annotated section 17-50-306. (Ord. 800, 3-6-2013)

7-1-3: DEFINITIONS:

CABLE MODEM SERVICE: Offering of internet services for a fee directly to the public in accordance with rules established by the FCC.

COUNTY: Summit County, Utah.

COUNTY COUNCIL: Legislative body of Summit County.

COUNTY RIGHTS OF WAY: The surface, the airspace above the surface, and the area below the surface of any public street, highway, lane, path, alley, sidewalk, boulevard, drive, concourse, bridge, tunnel, park, parkway, waterway, dock, bulkhead, wharf, pier, public water or public easements, or other public way within the county, which, consistent with the purposes for which it was dedicated, may be used for the purpose of installing and maintaining private utilities, public utilities, and telecommunication services.
FRANCHISE: A nonexclusive initial authorization, or renewal thereof, issued by the county which authorizes the construction, maintenance or operation of a public utility, private utility, or telecommunication service system along the county right of way. A franchise shall not be construed to include any general license required for the privilege of transacting and carrying on a business within the county as may be required by other ordinances and laws of the county, or for attaching devices to poles or structures, whether owned by the county or a private entity, or for excavating or performing other work in or along the county right of way, unless otherwise provided in a grantee’s franchising agreement. Franchises are classified as either Class A or Class B.

FRANCHISE AGREEMENT: A contract entered into pursuant to this chapter between the county and a grantee that sets forth, subject to this chapter, the terms and conditions under which a Class A Franchise will be granted and exercised.

GRANTEE: A natural person, domestic or foreign corporation, partnership, limited liability company, association, joint venture or organization of any kind granted a franchise by the county council, and any lawful successor thereto, or transferee or assignee thereof.

OPEN VIDEO SYSTEM (OVS): A facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service, including video programming, that is provided to multiple customers within a community, including, but not limited to, pedestals, equipment enclosures (such as equipment cabinets), amplifiers, power guards, nodes, cables, fiber optics and other equipment necessary to operate the OVS, or installed in conjunction with the OVS, the operator of which has been certified by the FCC.

PERSON: An individual, partnership, association, joint stock company, organization, corporation, joint venture, limited liability company, or any lawful successor thereto or transferee thereof, but such term does not include the county.

PRIVATE UTILITY: A utility which is not regulated by the Utah public service commission, is not a governmental entity, and is not a telecommunications service.

PUBLIC UTILITY: A utility which either is regulated by the Utah public service commission or is a governmental entity.

SMALL WIRELESS FACILITIES: A type of Wireless Facility which meets the requirements set forth in UCA §§54-21-101, as amended.

TELECOMMUNICATIONS: The transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

TELECOMMUNICATIONS SERVICE: Offering of telecommunications for a fee directly to the public or to such classes of users as to be effectively available directly to the public, regardless of facilities used. For purposes of this chapter, telecommunication services shall not include telephone and telegraph services. Telecommunication services shall include cable TV, and OVS, Wireless Facilities, and Small Wireless Facilities. Telecommunications service is differentiated from private utilities and public utilities in that they are “for profit” enterprises which are federally regulated under Title VI of the Telecommunications Act of 1934 and do not constitute a utility.

UTILITY: A business or service which is engaged in regularly supplying the public with some commodity or service which is of public consequence and need, such as electricity, natural gas, water, sewer, or telephone service. (Ord. 800, 3-6-2013)
UTILITY FACILITIES: Distribution and transmission lines and related appurtenances, including underground conduits and structures.

WIRELESS FACILITIES: Equipment at a fixed location that enables wireless communication between user equipment and a communications network, as further defined in UCA 654-21-101, as amended.

7-1-4: FRANCHISE REQUIRED:

A. No person shall construct, install, maintain or operate a private utility, public utility, or telecommunications service on, over, through, or within the county rights of way, or on, over, through or within any other public property of the county, unless that person has been granted a franchise by the county council and its franchise agreement is in full force and effect. (Ord. 800, 3-6-2013)

B. There are hereby established two classes of franchises.

   1. Class A Franchise: A private utility, public utility, or telecommunications service which has a franchise agreement with the county.

      a. A Class A Franchise shall entitle the private utility, public utility, or telecommunications service to the following privileges:

         i. Priority with regard to the placement of utility facilities or wireless facilities within the county rights of way over Class B Franchisees;

         ii. Non-interference covenant with respect to Class B Franchisees and adjoining property owners, which covenant shall be managed by the county engineer;

         iii. Non-revocable term, subject to the conditions of the franchise agreement;

         iv. Extended relocation deadlines;

         v. Protection from Class B Franchisee claims of financial reimbursement for relocations necessitated by the Class A Franchisee; and

         vi. Waiver of bonds and surety requirements.

   2. Class B Franchise: A private utility or public utility which constructs, installs, maintains, or operates a utility facility within the county rights of way without a franchise agreement and subject to a revocable license granted by the county.

7-1-5: CLASS A FRANCHISE CRITERIA; PUBLIC UTILITIES:

"Private utilities," "Public utilities," and telecommunications services seeking to obtain a Class A Franchise to utilize a "county right of way," for the purposes defined in section 7-1-1 of this chapter, must do the following as a prerequisite to the granting of a franchise:

A. Enter into a franchise agreement with the county. The franchise agreement shall, at a minimum, provide for the following:

   1. A term not to exceed fifty years.

   2. Standards of service which shall include:
a. Restoration of the county rights of way;
b. Relocation of utility facilities or wireless facilities for the benefit of the county;
c. Relocation of utility facilities or wireless facilities for the benefit of third parties;
d. Vegetation maintenance and management;
e. Adherence to safety requirements and protocols;
f. Extensions of utility facilities or wireless facilities;
g. Notifications;
h. Emergency or disaster utilization; and
i. Subscriber service standards (unless otherwise regulated by the Utah Public Service Commission or where the service constitutes a Small Wireless Facility regulated under UCA Title 54, Chapter 21, as amended).

3. Franchise fee.

4. Renewal and transfer provisions.

5. Insurance, bonds, sureties, and indemnification provisions.


7. An as-built CAD drawing of the utility facility or wireless facility within the county rights of way with GIS mapping coordinates.

B. Complete and submit the standard form of an excavation permit as provided by Summit County.

C. Provide a written statement showing that granting of the requested franchise will further a public purpose.

D. Provide evidence in the form of a guarantee or bond that work will be completed in a professional manner, and that any damage to roadway or roadbed will be repaired in a timely manner and said repairs will be guaranteed for a period of two (2) years. (Ord. 800, 3-6-2013)

7-1-6: CLASS B FRANCHISE CRITERIA; PRIVATE UTILITIES:

A. "Private utilities" and public utilities seeking to obtain a Class B Franchise to utilize a "county right of way" for the purposes defined in section 7-1-1 of this chapter must do the following as a prerequisite to the granting of a franchise:

1A. Provide evidence that the granting of a franchise shall further a public purpose.
2B. Provide evidence that the private utility has attempted in good faith to acquire easements from private property owners to avoid the use of the county rights of way.

3C. Provide evidence that the county rights of way, which are the subject of the application, have adequate capacity.

4D. Complete and submit the standard form of an excavation permit as provided by Summit County.

5E. Provide evidence in the form of a guarantee or bond that work will be completed in a professional manner, and that any damage to roadway or roadbed will be repaired in a timely manner and said repairs will be guaranteed for a period of two (2) years. (Ord. 800, 3-6-2013)

6. Provide an as-built CAD drawing of the utility facility within the county rights of way with GIS mapping coordinates.

B. The following regulations shall apply to all Class B Franchises:

1. Utility facilities of Class B Franchises shall not materially interfere with utility facilities of Class A Franchises or with the county’s use and operation of the county rights of way.

2. If, during the course of the franchisee’s construction, operation, maintenance, or replacement of utility facilities, franchisee causes damage to or alters the county rights of way or causes damage to public or private property, franchisee shall replace or repair and restore the same at franchisee’s expense to the condition existing immediately prior to such damage or alteration and in a manner reasonably approved by the county engineer.

3. The county reserves the right to require franchisee to protect, support, raise, lower, temporarily disconnect, relocate in or remove its utility facilities from the county rights of way in the interest of public convenience, necessity, health, safety or welfare at no cost to the county. Upon its receipt of reasonable advance notice, to be not less than five (5) business days in the event of a temporary relocation and no less than ten (10) business days for a permanent relocation, the franchisee shall, at its own expense, protect, support, raise, lower, temporarily disconnect, relocate in or remove from the county rights way, any property of the franchisee when requested by the county by reason of traffic conditions, public safety, street abandonment, freeway and street construction, change or establishment of street grade, installation of sewers, drains, gas or water pipes, power lines or other utility infrastructure, or any other reason requested by the county.

4. The franchisee shall, on the request of any person holding a lawful permit issued by the county, protect, support, raise, lower, temporarily disconnect, relocate in or remove from the county rights of way as necessary any property of the franchisee, provided (a) the expense of such is paid by the franchisee benefiting from the relocation, and (b) the franchisee is given reasonable advanced written notice to prepare for such changes. With respect to a relocation requested by a Class A Franchisee, the costs associated with the relocation shall be borne by the Class B Franchisee. For purposes of this subsection, reasonable advanced written notice shall be no less than ten (10) calendar days in the event of a temporary relocation, and no less than sixty (60) calendar days for a permanent relocation.
5. Construction, operation, maintenance, and replacement of the utility facilities shall be performed in an orderly and workmanlike manner. All such work shall be performed in accordance with generally applicable federal, state, and local regulations. The utility facilities shall not endanger or unreasonably interfere with the safety of persons or property within the county.

6. All underground utility facilities shall be placed at least twenty-four (24) inches below the surface grade or as required by the County Engineer.

7. Before installing new utility facilities or replacing existing utility facilities, franchisee shall first notify the county of such work by written notice and shall allow the county, at its own expense (to include a pro rata share of the trenching costs), to share the trench of franchisee to make its own improvements therein, provided that such action by the county will not unreasonably interfere with franchisee's utility facilities or delay project completion.

8. Franchisee shall insure that the utility facilities are designed, installed, operated, maintained, and replaced in a manner that fully complies with federal, state, and local rules and regulations, as such are revised or amended from time to time. As provided in those rules and regulations, the county shall have, upon request, the right to obtain a copy of tests and records required in accordance with those appropriate rules and regulations.

9. Franchisee shall indemnify, save and hold harmless, and defend the county, its officers, boards and employees, from and against any and all claims, demands, liens, and all liability for damages of whatsoever kinds, including but not limited to any liability or claims resulting from property damage or bodily injury (including accidental death), which arises out of the franchisee's use or occupancy of the county rights of way or of franchisee's acts or omissions pursuant to or related to this franchise, and to pay any and all costs, including reasonable attorney's fees incurred by the county in defense of such claims, demands or liens brought hereunder.

C. The county may revoke and terminate this franchise with or without cause. Upon termination, franchisee shall cease all operations of the utility facilities within the county rights of way and remove the utility facility within ninety (90) calendar days thereafter.

7-1-7: CRITERIA; TELECOMMUNICATION SERVICES:

"Telecommunication services" are governed by Title VI of the Telecommunications Act of 1934, as amended (the "Act"). Conditions and terms of any franchise agreement, including regulation of services and fees, shall comply with the Act. Franchises to telecommunication service providers shall be nonexclusive. Telecommunication service providers seeking to obtain a franchise to utilize a "county rights of way" must do the following as a prerequisite to the granting of a franchise:

A. Provide evidence that it is a telecommunications service as defined in section 7-1-3 of this chapter the granting of a franchise shall further a public purpose.

B. Obtain a Class A Franchise in accordance with section 7-1-5, and satisfy Agree to the following additional service requirements, which shall be memorialized within the franchise agreement:

1. Extension Of System: Whenever the grantee receives a request for telecommunication service from a county resident in a contiguous unserved area where there are at least fifteen (15) residences within one thousand three hundred twenty (1,320) cable bearing strand feet (¼ cable mile) from the portion of the grantee's trunk or distribution cable which is to be extended, it shall
extend its system to such residents at no cost to said residents for the system extension, other than
the published standard/nonstandard installation fees charged to all customers of grantee for
telecommunication services.

2. Compliance With FCC Rules: The grantee is responsible for ensuring that the
telecommunication system is designed, installed and operated in a manner that fully complies with
FCC rules in subpart K of part 76 of chapter I of title 47 of the code of federal regulations as revised
or amended from time to time.

3. Service To County Offices: The grantee shall, upon request, provide without charge, one
outlet of basic service to those county offices, fire station(s), police station(s), public school
building(s) and other county buildings that are passed by its system. The outlets of basic and
expanded basic service shall not be used to distribute or sell services in or throughout such
buildings, nor shall such outlets be located in areas open to the public. The grantee shall not be
required to provide an outlet to such buildings where the drop line from the feeder cable to said
building or premises exceeds one hundred twenty five (125) cable feet unless the appropriate
governmental entity agrees to pay the incremental cost of such drop line in excess of one hundred
twenty five (125) cable feet. If additional outlets of basic and expanded basic service are provided to
such buildings, the building owner shall pay the usual installation fees associated therewith,
including, but not limited to, labor and materials.

4. Emergency Alert System: In accordance with and at the time required by the provisions of
FCC regulations part 11, subpart D, section 11.51, and as other provisions which may from time to
time be amended, the grantee shall install and maintain an emergency alert system (EAS) for use in
transmitting emergency act notifications (EAN) and emergency act terminations (EAT) in local and
statewide situations as may be designated to be an emergency by the local primary (LP), the state
primary (SP) and/or the state emergency operations center (SEOC), as those authorities are
identified and defined within FCC regulations, section 11.18.

5. Telephone Access: The grantee will maintain a local, toll free or collect call telephone
access line which will be available to customers twenty four (24) hours a day, seven (7) days a
week.

6. Standards: Under normal operating conditions, each of the following standards will be met
no less than ninety five percent (95%) of the time, as measured by the grantee on a quarterly basis:

a. Standard installations will be performed within seven (7) business days after an
order has been placed and the customer is ready to take service. Standard installations are those
that are located up to one hundred twenty five feet (125) from the existing distribution system.

b. Excluding conditions beyond its control, the grantee will begin working on service
interruptions promptly and in no event later than twenty four (24) hours after the interruption
becomes known. The grantee will begin actions to correct other service problems the next business
day after notification of the service problem.

c. The grantee will provide "appointment window" alternatives for installations,
service calls and other installation activities, which will be either a specific time, or at maximum, a
four (4) hour time block during normal business hours.

d. The grantee shall not cancel an appointment with a customer after the close of
business on the business day prior to the scheduled appointment.
e. If a representative of the grantee is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the grantee will contact the customer as soon as possible but no later than thirty (30) minutes before the "appointment window" begins. The appointment will be rescheduled, as necessary, at a time which is convenient for the customer.

7. Notifications To Customers:

a. The grantee shall provide written information on each of the following areas at the time of installation of service, and at any time upon request:

(1) Products and services offered;

(2) Prices and options for services and conditions of subscription to programming and other services;

(3) Installation and service maintenance policies;

(4) Instructions on how to use the service;

(5) Channel positions of programming carried on the system; and

(6) Billing and complaint procedures, including the address and telephone number of the local county’s telecommunication services office.

b. Customers will be notified of any changes in rates, programming services or channel positions as soon as possible through announcements on the system and in writing.

Notice will be given to customers a minimum of thirty (30) days in advance if the change is within the control of the grantee. In addition, the grantee shall notify customers thirty (30) days in advance of any significant changes in the other information required in subsection B7a of this section.

8. Billing:

a. Bills will be clear, concise and understandable. Bills will be fully itemized, with itemizations including, but not limited to, basic and premium service charges and equipment charges. Bills will also clearly describe all activity during the billing period, including optional charges, rebates and credits.

b. In case of a billing dispute, the grantee will respond to a written complaint from a customer within thirty (30) days from receipt of the complaint.

9. Educational And Governmental Channel: Upon request by the county, the grantee shall make available one channel to be used for educational and governmental cablecast programming. If programming time is not used by the county and is available for sharing, the channel may be shared with other municipalities receiving programming from the common headend receive site location. The grantee reserves the right to program the designated educational and governmental channel during the hours not used by the county or other governmental entities. This provision is not applicable to OVS services.
10. Regulation Of Rates: The county may adopt the requisite ordinances to regulate rates for the provision of basic cable TV service and equipment as defined, provided and permitted by the 1984 communications act, as amended by the cable television consumer protection and competition act of 1992 ("1992 act"), or any successive legislation, together with implementing regulations promulgated by the FCC.

11. Filing Of Schedule Of Rates: The grantee shall file with the county on December 31 of each year a full schedule of all customer user rates and all other charges including, but not limited to, pay TV, lease channel and discrete services, made in connection with the system.

12. Technical Tests: The county may perform technical tests of the system during reasonable times and in a manner that does not unreasonably interfere with the normal business operations of the grantee or the system in order to determine whether or not the grantee is in compliance with the terms hereof and applicable state or federal laws. Except in emergency circumstances, such tests may be undertaken only after giving the grantee reasonable notice thereof, not to be less than five (5) business days, and providing a representative of the grantee an opportunity to be present during such tests. In the event that such testing demonstrates that the grantee has substantially complied with such material provisions hereof, the cost of such testing shall be borne by the county. The county agrees that such testing shall be undertaken no more than once a year without reasonable cause, including, but not limited to, customer complaints. The results thereof shall be made available to the grantee.

13. Review Of Books And Records: The grantee agrees that the county, upon thirty (30) days' written notice to the grantee, may review such of its books and records at the grantee's business office, during normal business hours and on a nondisruptive basis, as is reasonably necessary to ensure compliance with the terms of the franchise. Such records shall include, but shall not be limited to, any public records required to be kept by the grantee pursuant to the rules and regulations of the FCC. Such notice shall specifically reference the section of the franchise which is under review, so that the grantee may organize the necessary books and records for easy access by the county. The grantee shall not be required to maintain any books and records for franchise compliance purposes longer than three (3) years from the date of the book or record. Notwithstanding anything to the contrary set forth herein, the grantee shall not be required to disclose information which it reasonably deems to be proprietary or confidential in nature, nor disclose books and records of any affiliate which is not providing service within the county. The county agrees to treat any information disclosed by the grantee as confidential and only to disclose it to employees, representatives, and agents thereof that have a need to know, or in order to enforce the provisions hereof. The grantee shall not be required to provide subscriber information in violation of section 551 of the cable act.

14. Audit Of Records: On an annual basis, upon thirty (30) days' prior written notice, the county, including the county auditor or his/her authorized representative, shall have the right to conduct an independent audit of grantee's records reasonably related to the administration and enforcement of the franchise, in accordance with generally accepted accounting principles ("GAAP"). If the audit shows that franchise fee payments have been underpaid by five percent (5%) or more, the grantee shall pay the underpayment plus interest and the total cost of the audit. Such cost shall not exceed five thousand dollars ($5,000.00) for each year of the audit period without grantee's prior written consent. The county's right to audit and the grantee's obligation to retain records related to a franchise fee audit shall expire three (3) years after each franchise fee payment has been made to the county.

15. Insurance: The grantee shall maintain in full force and effect, at its own cost and expense, during the term of the franchise, comprehensive commercial general liability insurance in
the amount of two million dollars ($2,000,000.00) combined single limit per occurrence and three million dollars ($3,000,000.00) aggregate for bodily injury and property damage. The grantee shall provide to the county an endorsement to the insurance policy designating the county as an additional primary insured. Such endorsement shall provide that such insurance coverage is primary and not contributory to any insurance policy maintained by the county. Additionally, the grantee shall maintain in full force and effect, automobile liability insurance with limits of no less than five hundred thousand dollars ($500,000.00) combined single limit per accident for bodily injury and property damage. Such insurance shall be noncancelable except upon thirty (30) days’ prior written notice to the county. The grantee shall increase the limits of such insurance to at least the amount of the limitation of judgments described in section 63G-7-604 of the governmental immunity act of Utah, as calculated by the state risk manager every two (2) years and stated in Utah administrative code R37-4-3.

C. Provide evidence that the county rights of way, which are the subject of the franchise, have adequate capacity.

D. Complete and submit the standard form of an excavation permit as provided by Summit County.

E. Provide evidence in the form of a guarantee or bond that work will be completed in a professional manner, and that any damage to roadway or roadbed will be repaired in a timely manner and said repairs will be guaranteed for a period of two (2) years.

F. Franchisee shall pay to the county a franchise fee of five percent (5%) of annual gross revenue. The twelve (12) month period applicable under the franchise for computation of the franchise fee shall be a calendar year. The period of limitation for recovery of any franchise fee payable under this chapter or for any overpayment shall be three (3) years from the date on which payment by the grantee is due, or from the date payment is made in the case of an overpayment.

G. An OVS that complies with 47 USC section 573 and is certified by the FCC shall pay a fee in lieu of a franchise fee of five percent (5%) of annual gross revenue on the same basis as other telecommunication service providers having franchise agreements within the county. (Ord. 800, 3-6-2013)

H. A Small Wireless Facility in accordance with UCA Title 54, Chapter 21 is exempt from 7-1-7(6)(3), (6) – (12). With respect to a Small Wireless Facility, grantee shall pay to the county a franchise fee of three and one half percent (3.5%) of all gross revenue related to the grantee’s use of the county rights of way or an annual fee of $250 for each Small Wireless Facility, whichever is greater. The twelve (12) month period applicable under the franchise for computation of the franchise fee shall be a calendar year. The period of limitation for recovery of any franchise fee payable under this chapter or for any overpayment shall be three (3) years from the date on which payment by the grantee is due, or from the date payment is made in the case of an overpayment.

7-1-8: SMALL WIRELESS FACILITIES:
**7-1-9: EXCAVATION PERMIT APPROVALS; APPEAL:**

A. The county council has delegated the county engineer as the authority to approve, deny, or approve with conditions any and all excavation permits on county rights of way. The county engineer shall have wide discretionary power to grant or deny permits as deemed to be in the best interests of the county. Such decisions may be appealed to the county council, whose decision shall be final.

B. Upon receipt of a properly completed excavation permit application, the county engineer shall:

1. Review the application for completeness.

2. Review the area to be excavated to determine that adequate capacity is available, and that the placement of facilities applied for will not jeopardize any higher or more necessary uses known to the county.

3. Issue a timely response to the applicant in the form of an approved permit, approved permit with conditions, or permit denial.

4. Where a franchise agreement is required under this chapter, the county engineer shall not issue an excavation permit prior to the county council's approval of the franchise.

5. The county engineer is expressly empowered to determine the depth of the placement of all infrastructure within the county right of way. (Ord. 800, 3-6-2013)

**7-1-109: FRANCHISE FEES:**

The county council shall periodically set franchise fees for the use of the county rights of way, as allowed in Utah code and federal law. (Ord. 800, 3-6-2013)

**7-1-110: PREEMPTION:**

A. In the event that federal or state laws, rules or regulations preempt a provision or limit enforceability of a provision of this chapter, then the provision shall be read to be preempted but only to the extent and for the time, required by law. In the event such federal or state law, rule or
regulation is subsequently repealed, rescinded, amended, or otherwise changed so that the provision herein that had been preempted is no longer preempted, parties shall negotiate in good faith to establish reasonable time frames in which such provision shall thereupon return to full force and effect, and shall thereafter be binding on all grantees, without the requirement of further action on the part of the county.

B. According to FCC rule, cable modem services are classified as "information services" whose regulation by state and local authorities has been preempted by federal law. In the event that FCC rule or judicial determination alters the status of cable modem services such that state and local regulation is no longer preempted, the county expressly reserves the right to treat cable modem services in the same manner as a telecommunications service under this chapter without further amendment. (Ord. 800, 3-6-2013)

Council Member Armstrong made a motion to adopt Ordinance 800-A, Amendments to Summit County Code, Title 7, Chapter 1, which governs the use of the County’s rights-of-way, including language changes discussed and final review and approval by the Chair. Council Member Wright seconded and all voted in favor, 4-0.

**Discussion and possible approval of Franchise Agreement Between Summit County, Utah, and New Cingular Wireless, PCS, LLC; Dave Thomas**

Dave Thomas then presented the following Franchise Agreement between Summit County and New Cingular Wireless PCS, LLC for review and approval.
FRANCHISE AGREEMENT
BETWEEN SUMMIT COUNTY,
UTAH AND
NEW CINGULAR WIRELESS PCS, LLC

This Franchise Agreement is made and entered into effective as of the \( \text{June} \), 2020 (the “Effective Date”), by and between SUMMIT COUNTY, a body corporate and politic of the State of Utah (the "County") and NEW CINGULAR WIRELESS PCS, LLC, a Delaware limited liability company ("Grantee"). The County and the Grantee are referred to individually as a "Party" and collectively as the "Parties."

The County hereby acknowledges that the Grantee has the financial, legal, and technical ability to provide services, facilities, and equipment necessary to meet the telecommunications related needs of the community, and having afforded the public adequate notice and opportunity for comment, desires to enter into this non-exclusive Franchise (defined below) with the Grantee for the construction and operation of a Wireless Telecommunications System (defined below) on the terms set forth herein.

The County has authority pursuant to U.C.A. §17-50-306 to "grant franchises along and over the public roads and highways for all lawful purposes, upon such terms, conditions and restrictions as in the judgment of the county legislative body are necessary and proper, to be exercised in such manner as to present the least possible obstruction and inconvenience to the traveling public.” Summit County Code (“Code”), Title 7, Chapter 1 governs franchise agreements.

SECTION 1

Definition of Terms

1.1 Terms. For the purpose of this Franchise, the following terms, phrases, words, and abbreviations shall have the meanings ascribed to them below. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number:

1.1.1 “Affiliate” when used in relation to any person, means another person who owns or controls, is owned or controlled by, or is under common ownership or control with, such person.

1.1.2 “County” means Summit County, Utah, or the lawful successor, transferee, or assignee thereof.

1.1.3 "FCC" means Federal Communications Commission or successor governmental entity thereto.

1.1.4 “Franchise” means this non-exclusive initial authorization, or renewal thereof, issued by the County which authorizes the construction, maintenance and operation of a public utility along the Public Way. This Franchise shall not be construed to include any general license required for
the privilege of transacting and carrying on a business within the County as may be required by other ordinances and laws of the County, or for attaching devices to poles or structures, whether owned by the County or a private entity, or for excavating or performing other work in or along the Public Way, except as otherwise provided in this Franchise Agreement.

1.1.5 "Franchise Agreement" means this contract, which is entered into pursuant to Code §7-1-4 between the County and Grantee that sets forth the terms and conditions under which this Franchise will be granted and exercised.

1.1.6 "Grantee" means New Cingular Wireless PCS, LLC or the lawful successor, transferee, or assignee thereof.

1.1.7 "Person" means an individual, partnership, association, joint stock company, trust, corporation, or governmental entity but not the County.

1.1.8 "Public Way" shall mean the surface of, and the space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, parkway, way, lane, public way, drive, circle, or other public right-of-way, including, but not limited to, public utility easements, dedicated utility strips, or rights-of-way dedicated for compatible uses and any temporary or permanent fixtures or improvements located thereon now or hereafter held by the County in the Service Area which shall entitle the County and the Grantee to the use thereof for the purpose of installing, operating, repairing, and maintaining the Wireless Telecommunications System. Public Way shall also mean any easement now or hereafter held by the County within the Service Area for the purpose of public travel, or for utility or public service use dedicated for compatible uses, and shall include other easements or rights-of-way as shall within their proper use and meaning entitle the County and the Grantee to the use thereof for the purposes of installing and operating the Grantee’s Wireless Telecommunications System over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments, and other property as may be ordinarily necessary and pertinent to the Wireless Telecommunications System. Public Way shall not include bike paths or trails not dedicated for utility services or compatible uses.

1.1.9 "Service Area" means the present boundaries of the County, and shall include any additions thereto by annexation or other legal means, subject to the exceptions in subsection 3.9.

1.1.10 "Subscriber" means a customer who lawfully receives Wireless Telecommunications Service from the Grantee, as the term “customer” is defined in Grantee’s service contracts.

1.1.11 "Wireless Telecommunications Service" means the transmission and reception of communications signals for the provision of all services authorized by federal or state law, including personal wireless services, telecommunications services, and commercial mobile data services, as those terms are defined by federal law. This Franchise Agreement does not authorize the provision of any other service without a separate agreement between the parties, or an amendment to this Franchise Agreement signed by both Parties.
1.1.12 "Wireless Telecommunications System" means the Grantee's facility, consisting of antennas, communications equipment, electric and communications cables, and related accessories and improvements, including facilities that operate on FCC-approved frequencies in the bands authorized for commercial wireless communication services pursuant to FCC licenses issued to Grantee, and all associated equipment that is designed to provide Wireless Telecommunication Service to multiple customers within the Service Area.

SECTION 2

Grant of Franchise

2.1 **Grant.** The County hereby grants to the Grantee, during the Term, a nonexclusive Franchise which authorizes the Grantee to construct and operate a Wireless Telecommunications System in, along, among, upon, across, above, over, under, or in any manner connected with Public Ways within the Service Area, and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain, or retain in, on, over, under, upon, across, or along any Public Way such facilities and equipment as may be necessary or appurtenant to the Wireless Telecommunications System.

2.2 **Competitive Equity.** The Grantee acknowledges and agrees that the County reserves the right to grant one (1) or more additional franchises or other similar lawful authorization to provide Wireless Telecommunications Services within the County; provided, the County agrees that, within ninety (90) days of the Grantee’s request, it shall amend this Franchise to include any material terms or conditions that it makes available to the new entrant, or provide relief from existing material terms or conditions, so as to insure that the regulatory and financial burdens on each entity are materially equivalent. "Material terms and conditions" include, but are not limited to: insurance; System build-out requirements; security instruments; and notice and opportunity to cure breaches. The parties agree that this provision shall not require a word for word identical franchise or authorization for a competitive entity so long as the regulatory and financial burdens on each entity are materially equivalent.

2.3 **Term.** The Franchise granted hereunder shall be for an initial term of ten (10) years commencing on the Effective Date of the Franchise as set forth in subsection 7.7, unless otherwise lawfully terminated in accordance with the terms of this Franchise.

SECTION 3

Standards of Service

3.1 **Conditions of Occupancy.** The Wireless Telecommunications System installed by the Grantee pursuant to the terms hereof shall be located so as to cause a minimum of interference with the proper use of Public Ways and with the rights and reasonable convenience of property owners who own property that adjoins any of such Public Ways.

3.2 **Other Ordinances.** The Grantee agrees to comply with the terms of any lawfully adopted generally applicable local ordinance and regulations, to the extent the provisions of the ordinance or regulations do not: (i) apply retroactively to existing components of Grantee’s Wireless
Telecommunications System, or (ii) have the effect of limiting the benefits or expanding the obligations of the Grantee that are granted by this Franchise. Neither Party may unilaterally alter the material rights and obligations set forth in this Franchise. In the event of a conflict between any ordinance and this Franchise, the Franchise shall control, provided however, that the Grantee agrees that it is subject to the lawful exercise of the police power of the County.

3.3 **Restoration of Public Ways.** If during the course of the Grantee’s construction, operation, or maintenance of the Wireless Telecommunications System there occurs a disturbance of any Public Way by the Grantee, Grantee shall replace and restore such Public Way at Grantee’s expense to a condition reasonably comparable to the condition of the Public Way existing immediately prior to such disturbance and in a manner reasonably approved by the County Engineer.

3.4 **Relocation for the County.** Upon its receipt of reasonable advance written notice, to be not less than thirty (30) days in the event of a temporary relocation and no less than sixty (60) days for a permanent relocation, the Grantee shall, at its own expense except as provided by law or entitlement, protect, support, raise, lower, temporarily disconnect, relocate in or remove from the Public Way, any property of the Grantee when lawfully required by the County by reason of traffic conditions, public safety, street abandonment, freeway and street construction, change or establishment of street grade, installation of sewers, drains, gas or water pipes, power lines or other municipal utility infrastructure, or any other type of public structures or improvements which are not used to compete with the Grantee’s services.

3.5 **Relocation for a Third Party.** The Grantee shall, on the request of any Person holding a lawful permit issued by the County, protect, support, raise, lower, temporarily disconnect, relocate in or remove from the Public Way as necessary any property of the Grantee, provided: (A) the expense of such is paid by said Person benefiting from the relocation, including, if required by the Grantee, making such payment in advance; and (B) the Grantee is given reasonable advance written notice to prepare for such changes. For purposes of this subsection, "reasonable advance written notice" shall be no less than thirty (30) calendar days in the event of a temporary relocation, and no less than sixty (60) calendar days for a permanent relocation. The Grantee shall employ commercially available best practices to meet the relocation times. In the event the Grantee has commenced efforts to complete the relocation and is making continuous progress toward completion, the relocation time shall be extended as necessary to allow for completion.

3.6 **Trimming of Trees and Shrubbery.** After obtaining the prior written consent of the County, the Grantee shall have the authority to trim trees or other natural growth overhanging any of its Wireless Telecommunications System within Public Ways in the Service Area so as to prevent branches from coming in contact with the Grantee’s wires, cables, or other equipment. The Grantee shall reasonably compensate the County for any damage caused by such trimming, or shall, in its sole discretion and at its own cost and expense, with the prior written consent of the County, reasonably replace all trees or shrubs damaged as a result of any construction of the Wireless Telecommunications System undertaken by the Grantee. Such replacement shall satisfy any and all obligations the Grantee may have to the County pursuant to the terms of this Section. Nothing herein shall give the Grantee the right to trim trees not within Public Ways without the permission of the landowner or without the permission of the County upon showing of public need.
3.7 Safety Requirements. Construction, operation, and maintenance of the Wireless Telecommunications System shall be performed in an orderly and workmanlike manner. All such work shall be performed in accordance with generally applicable federal, state, and local regulations and the National Electric Safety Code. The Wireless Telecommunications System shall not endanger or unreasonably interfere with the safety of Persons or property in the Service Area.

3.8 Aerial and Underground Construction. Prior to construction, in each case, all applicable permits shall be applied for and granted and all fees shall be paid. All other codes and ordinances of the County that pertain to such construction shall be complied with.

3.8.1 In those areas of the Service Area where all of the transmission or distribution facilities of the respective public utilities providing telephone communications and electronic services are underground, the Grantee likewise shall construct, operate, and maintain all of its transmission and distribution facilities underground. In those areas of the Service Area where the transmission or distribution facilities of the respective public utilities providing telephone communications, and electric services are both aerial and underground, the Grantee shall consult with the County Engineer to determine whether the construction will be aerial or underground, and wherever possible depending on the season and the location construct, operate and maintain all of its transmission and distribution facilities, or any part thereof, underground. If the reason for not putting the facilities underground is seasonal, subject to County waiver as weather and other conditions may require the Grantee shall make reasonable efforts to move such facilities underground as weather permits, but no later than June 30 of the next summer.

3.8.2 For the purposes of this Franchise, with the exception of service drops, facilities to be placed "underground" shall be at least twenty four (24) inches below the surface grade.

3.8.3 Nothing contained in this Section shall require the Grantee to construct, operate, and maintain underground any ground-mounted appurtenances such as subscriber taps, line extenders, system passive devices (splitters, directional couplers), amplifiers, power supplies, pedestals, antennas or other related equipment that must remain above ground in order to be functional.

3.9 Extensions of the Wireless Telecommunications System. The Grantee shall have the right, but not the obligation, to extend the Wireless Telecommunications System into any portion of the Service Area where another operator is providing Wireless Telecommunications Service, into any annexed area which is not contiguous to the present Service Area of the Grantee, or into any area which is financially or technically infeasible due to extraordinary circumstances, such as a runway or freeway crossing.

3.10 New Construction. In cases of new subdivision construction, the developer shall give Grantee reasonable notice of such construction or development and the particular date of which open trenching will be available for the Grantee's installation of conduit. Costs of trenching shall be borne by the developer unless agreed to otherwise between Grantee and developer.

3.11 Technical Standards.

3.11.1 The Grantee is responsible for insuring that the Wireless Telecommunications System is designed, installed and operated in a manner that fully complies with FCC rules as revised or amended from time to time. As provided in these rules, the County shall have, upon
request, the right to obtain a copy of tests and records required in accordance with appropriate rules but has no authority, pursuant to federal law, to enforce compliance with such standards; provided, however, that in no event shall this Section 3.11.1 be construed to require Grantee to disclose proprietary or confidential information without adequate safeguards for its confidential or proprietary nature.

3.11.2 The Grantee shall submit an industry standard pole load analysis to the County Engineer indicating that the utility pole to which the Wireless Telecommunications System is to be attached, will safely support the load.

3.11.3 The County Engineer shall approve locations of all utility poles placed by Grantee within the Public Ways. Utility poles shall be located at least ten (10) lineal feet from any paved road surfaces. Utility poles shall not exceed fifty (50) feet above ground level and an antenna of a Wireless Telecommunications System shall not extend more than ten (10) feet above the top of a utility pole. All equipment attachments to the utility pole shall be placed higher than eight feet above ground level. Said County Engineer approval shall adhere to the following process: (i) Grantee shall provide the County Engineer with at least three (3) proposed locations for each utility pole (the “Initial Proposed Locations”), (ii) County Engineer shall select one of the Initial Proposed Locations within thirty (30) calendar days, and (iii) in the event that the County Engineer rejects all Initial Proposed Locations, the County Engineer will work with Grantee using commercially reasonable efforts to determine an appropriate location for the utility pole.

3.12 **Subscriber Service Standards.**

3.12.1 **Office hours and availability.**

3.12.1.1 The Grantee will maintain a local, toll-free or collect call telephone access line and an active website with email capability, which will be available to Subscribers twenty-four (24) hours a day, seven (7) days a week.

3.12.1.1.1 Trained representatives of the Grantee will be available to respond to Subscriber telephone and email inquiries during normal business hours.

3.12.1.1.2 After normal business hours, an access line will be available to be answered by a service or an automated response system, including a phone answering system. Inquiries received after normal business hours must be responded to by a trained representative of the Grantee on the next business day.

3.12.2 The County reserves its right to establish lawful standards beyond those established by this Franchise including:

3.12.2.1 Customer service requirements.

3.12.2.2 Construction schedules.
3.12.2.3 Consumer protection laws.

SECTION 4

Regulation by the County

4.1 Franchise Fee. The Grantee shall pay to the County an annual franchise fee of Two Hundred Fifty and no/100 Dollars ($250.00) per Small Wireless Facility located in the County's Public Way, which franchise fee shall be due on April 1st of each calendar year, which amount shall be subject to increase or decrease to reflect the change, if any (measured from April of the previous calendar year to April of the then-present calendar year), in the Consumer Price Index for All Urban Consumers (CPI-U) Mountain-Plains region; all items, not seasonally adjusted; 1982-1984=100. A service charge of one and a half percent (1.5%) per month of the total amount due shall be imposed on payments made more than thirty (30) days past due.

4.2 Renewal of Franchise.

4.2.1 The County and the Grantee agree that any proceedings undertaken by the County that relate to the renewal of the Grantee's Franchise shall be governed by and comply with the provisions of federal law and FCC regulations.

4.2.2 The Grantee and the County agree that at any time during the term of the then current Franchise, while affording the public appropriate notice and opportunity to comment, the County and the Grantee may agree to undertake and finalize informal negotiations regarding renewal of the then current Franchise and the County may grant a renewal thereof.

4.3 Conditions of Sale. If a renewal of the Grantee's Franchise is denied or the Grantee's Franchise is lawfully terminated pursuant to Section 6 of this Franchise, and the County either lawfully acquires ownership of the Wireless Telecommunications System or by its actions lawfully effects a transfer of ownership of the Wireless Telecommunications System to another party, any such acquisition or transfer shall be in accordance with federal law.

The Grantee and the County agree that in the case of a final determination of a lawful revocation or termination of the Franchise, the Grantee shall be given a reasonable opportunity to effectuate a transfer of its Wireless Telecommunications System to a qualified third party. Furthermore, the Grantee shall be authorized to continue to operate pursuant to the terms of its prior Franchise during such a period of time; however, under no event shall such authorization exceed a period of time greater than twelve (12) months from the effective date of such revocation or termination. If, at the end of that time, the Grantee is unsuccessful in procuring a qualified transferee or assignee of its Wireless Telecommunications System which is reasonably acceptable to the County, the Grantee and the County may avail themselves of any rights they may have pursuant to federal or state law. It is further agreed that the Grantee's continued operation of the Wireless Telecommunications System during the twelve (12) month period shall not be deemed to be a waiver, nor an extinguishment of, any rights of either the County or the Grantee.
4.4 **Transfer of Franchise.** The Grantee's right, title, or interest in the Franchise shall not be sold, transferred or assigned, other than: (i) to an entity controlling, controlled by, or under common control with the Grantee, or (ii) in connection with a sale or other transfer of substantially all of Grantee's assets in the FCC market area where the Wireless Telecommunications System is located, without the prior consent of the County, such consent not to be unreasonably withheld. No such consent shall be required, however, for a transfer in trust, by mortgage, by other hypothecation, or by assignment of any rights, title, or interest of the Grantee in the Franchise or Wireless Telecommunications System in order to secure indebtedness. Within thirty (30) days of receiving a request for transfer, the County shall notify the Grantee in writing of any additional information it reasonably requires to determine the legal, financial and technical qualifications of the transferee. If the County has not taken action on the Grantee's request for transfer within one hundred twenty (120) days after receiving such request, consent by the County shall be deemed given.

**SECTION 5**

**Insurance and Indemnification**

5.1 **Insurance Requirements.** The Grantee shall maintain in full force and effect, at its own cost and expense, during the term of the Franchise, Commercial General Liability Insurance using ISO Form CG 00 01 in the amount of Two Million Dollars ($2,000,000) combined single limit per occurrence and Three Million Dollars ($3,000,000) aggregate for bodily injury and property damage. The Grantee shall provide a Certificate of Insurance including the County as an additional insured as respects this Franchise Agreement. Additionally, the Grantee shall maintain in full force and effect, Automobile Liability insurance with limits of $500,000 combined single limit per accident for bodily injury and property damage. Grantee shall require its insurer to provide at least thirty (30) days prior written notice to the County of cancellation or nonrenewal of any required insurance that is not replaced. Upon at least sixty (60) days' prior written notice from the County, the Grantee shall increase the limits of such insurance to at least the amount of the Limitation of Judgments described in Section 63-30d-604 of the Governmental Immunity Act of Utah, as calculated by the state risk manager every three (3) years and stated in Utah Admin. Code R37-4-3. Notwithstanding the foregoing, Grantee may, in its sole discretion, self-insure any of the required insurance under the same terms as required by this Franchise Agreement.

5.2 **Indemnification.** The Grantee agrees to indemnify, save and hold harmless, and defend the County, its officers, boards and employees, from and against any and all claims, demands, liens, and all liability for damages of whatsoever kind, including but not limited to any liability or claims resulting from direct damages, property damage, or bodily injury (including accidental death), which arise out of the Grantee's acts or omissions pursuant to or related to this Franchise, and to pay any and all costs, including reasonable attorney's fees, incurred by the County in defense of such claims, provided that the County shall give the Grantee written notice of its obligation to indemnify the County within twenty (20) days of receipt of a claim or action pursuant to this subsection. Notwithstanding the foregoing, the Grantee shall not indemnify the County for any damages, liability or claims resulting from the willful misconduct or negligence of the County.
SECTION 6

Enforcement and Termination of Franchise

6.1 Grounds for Termination. The County may terminate or revoke this Franchise and all rights and privileges herein provided as follows:

6.1.1 The Grantee, by act or omission, materially violates a material duty herein set forth in any particular within the Grantee's control, and with respect to which redress is not otherwise herein provided. In such event, the County, acting by or through its County Manager, may determine, after hearing, that such failure is of a material nature, and thereupon, after written notice giving the Grantee notice of such determination, the Grantee, within sixty (60) calendar days of such notice, shall commence efforts to remedy the conditions identified in the notice and shall have ninety (90) calendar days from the date it receives notice to remedy the conditions. After the expiration of such 90-day period and failure to correct such conditions, the County may declare the franchise forfeited and this Franchise terminated, and thereupon, the Grantee shall have no further rights or authority hereunder; provided, however, that any such declaration of forfeiture and termination shall be subject to judicial review as provided by law, and provided further, that in the event such failure is of such nature that it cannot be reasonably corrected within the 90-day time period provided above, the County shall provide additional time for the reasonable correction of such alleged failure if the reason for the noncompliance was not the intentional or negligent act or omission of the Grantee.

6.2 Remedies at Law. In the event the Grantee or the County fails to fulfill any of their respective obligations under this Franchise, the County or the Grantee, whichever the case may be, shall have a breach of contract claim and remedy against the other, in addition to any other remedy provided herein or by law; provided, however, that no remedy that would have the effect of amending the specific provisions of this Franchise shall become effective without such action that would be necessary to formally amend the Franchise.

6.3 Third Party Beneficiaries. The benefits and protection provided by this Franchise shall inure solely to the benefit of the County and the Grantee. This Franchise shall not be deemed to create any right in any person who is not a party and shall not be construed in any respect to be a contract in whole or in part for the benefit of any third party (other than the permitted successors and assigns of the Parties hereto).

6.4 Uncontrollable Events. The Grantee shall not be held in default under, or in noncompliance with, the provisions of the Franchise, nor suffer any enforcement or penalty relating to noncompliance or default, where such noncompliance or alleged defaults occurred or were caused by strikes, acts of God, power outages, or other events reasonably beyond its ability to control including any delays caused by the County.

6.5 Bonds and Surety.

6.5.1 Except as expressly provided herein, the Grantee shall not be required to obtain or maintain bonds or other surety as a condition of being awarded the Franchise or continuing its existence.

6.5.2 Notwithstanding the above provisions, the Grantee shall be responsible for standard
performance bonds and insurance required for encroachment permits for work done within Public Ways.

6.6 **Termination by Grantee.** Notwithstanding any other provision of this Franchise to the contrary, Grantee may terminate this Franchise with or without cause six months after giving the County notice of Grantee's intent to terminate.

**SECTION 7**

**Miscellaneous Provisions**

7.1 **Actions of Parties.** In any action by the County or the Grantee that is mandated or permitted under the terms hereof, such party shall act in a reasonable, expeditious, and timely manner. Furthermore, in any instance where approval or consent is required under the terms hereof, such approval or consent shall not be unreasonably withheld.

7.2 **Limitation of Liability.** Except for the indemnity obligations set forth in this Franchise, and otherwise notwithstanding anything to the contrary in this Franchise, the County and Grantee each waives any claims that each may have against the other with respect to consequential, incidental or special damages, however caused, based on any theory of liability.

7.3 **Entire Agreement.** This Franchise constitutes the entire agreement between the Grantee and the County on the subject of Wireless Telecommunications System and Service. Amendments to this Franchise for any purpose, including but not limited to any changes in state or federal law, shall be mutually agreed to in writing by the Parties.

7.4 **Notice.** Unless expressly otherwise agreed between the Parties, every notice or response required by this Franchise to be served upon the County or the Grantee shall be in writing, and shall be deemed to have been duly given to the required party when placed in a properly sealed and correctly addressed envelope: a) upon receipt when hand delivered with receipt/acknowledgment, or b) upon receipt when sent certified or registered mail.

The notices or responses to the County shall be addressed as follows:

Summit County Manager  
60 North Main  
Street PO Box 128  
Coalville UT 84017

with Copy to:

Summit County Attorney  
60 North Main Street  
P.O. Box 128  
Coalville, UT 84017

The notices or responses to the Grantee shall be addressed as follows:
New Cingular Wireless PCS, LLC
Attn: Network Real Estate Administration
Site No. Summit County Wireless Franchise Agreement (UT)
1025 Lenox Park Blvd NE, 3rd Floor
Atlanta, GA 30319

With a copy to:

New Cingular Wireless PCS, LLC
Attn: AT&T Legal Dept – Network Operations
Site No. Summit County Wireless Franchise Agreement (UT)
208 S. Akard Street
Dallas, TX 75202-4206

The County and the Grantee may designate such other address or addresses from time to time by giving notice to the other in the manner provided for in this subsection.

7.5 **Descriptive Headings.** The captions to Sections and subsections contained herein are intended solely to facilitate the reading thereof. Such captions shall not affect the meaning or interpretation of the text herein.

7.6 **Severability.** If any Section, subsection, sentence, paragraph, term, or provision hereof is determined to be illegal, invalid, or unconstitutional, by any court of competent jurisdiction or by any state or federal regulatory authority having jurisdiction thereof, such determination shall have no effect on the validity of any other Section, subsection, sentence, paragraph, term or provision hereof, all of which will remain in full force and effect for the term of the Franchise.

7.7 **Applicable Law.** The terms and conditions contained herein shall be interpreted according to the laws of the State of Utah, except where expressly preempted by federal law.

7.8 **No Waiver.** Neither the County nor Grantee shall be excused from complying with any of the terms and conditions of this Franchise by any failure of the other, or any of its officers, employees, or agents, upon any one or more occasions to insist upon or to seek compliance with any such terms and conditions.

7.9 **Counterparts.** This Franchise may be executed in several counterparts and all so executed shall constitute one agreement binding on all the Parties, notwithstanding that each of the Parties are not signatory to the original or the same counterpart. Further, executed copies of this Franchise delivered by facsimile shall be deemed an original signed copy of this Franchise.
Council Member Carson made a motion to approve the Franchise Agreement Between Summit County, Utah, and New Cingular Wireless, PCS, LLC, including language changes discussed and review and final approval of the Chair. Council Member Wright seconded and all voted in favor, 4-0.

Consideration and possible amendment of Summit County Employee Chart of Positions - Health Department: Rich Bullough, Phil Bondurant, and Brian Bellamy

Rich Bullough, Health Director, and Brian Bellamy, Personnel Director, reviewed the following staff report and amendment to the Chart of Positions. They recommended approval of the amendment to change the Public Health Emergency Planning position.
DATE: January 29, 2020
TO: Summit County Council
FROM: Rich Bullough, Janna Young, Brian Bellamy
RE: Requested Change in Chart of Positions within Health Department

The Summit County Health Department is proposing that the FTE currently performing both Public Health Emergency Planning (PHEP, within the Health Department) and Emergency Management (EM, within the Sheriff’s Department), be changed to a PHEP only position located in the Health Department. The Health Department holds a long-term contract with the State of Utah to fund a 100% PHEP position, and this contract will pay entirely for this FTE. It has been made clear to us that increasing our PHEP capacity is a condition of continued funding. Each time our program is audited, the County is called out for not having a full-time PHEP FTE. This requested chart of positions change would remedy this shortfall.

The Sheriff’s Office is working with the County Manager’s Office on rewriting the Emergency Manager job description to pull out the PHEP duties and bolster emergency management capacity as well. Due to the two functions being combined currently into one FTE, focus is split between PHEP responsibilities and emergency preparedness, creating deficits in both programs. By separating the two programs under two different managers, we believe the County will become more prepared for both health emergencies and natural disasters or manmade emergencies that may occur within our community. We expect a small budgetary impact to this change since the PHEP grant paid for 25% of the Emergency Manager position. We are confident we will be able to fill that gap with a combination of federal funding and reallocating vacant positions into which we do not plan to hire.
Council Members asked for additional information including transition and responsibilities of each position. Also, a breakdown of funding and budget needed prior to approving the amendment request. This matter will be re-scheduled.

Public Input

Jan Mikolajczak is here concerned about growth in the Park City area and feels the community is forgetting about retired people, many of whom have larger homes that now desire to downsize. She understands the need for homes for the workforce, but how can smaller homes be built for retired people that still want to live here. This is not a request for assisted living or a retirement facility.

Gus Sharry lives in Summit Park. He asked how the Council feels about control or prohibiting surveillance cameras on County property or the public rights of way. What mechanism or policy would keep video on the controlled ground and not spread to private property. He is concerned about overreach in yards and homes.

Council Minutes dated January 15, 2020, and January 22, 2020

Council Member Carson made a motion to approve the minutes of January 15, and January 22, 2020 with corrections noted. Council Member Wright seconded and all voted in favor, 4-0.

Public hearing and possible action regarding a Special Exception for a septic system within 200' of a delineated wetland, Paul and Stacy Kraus, lot SL-H-498, 7316 Whileaway Road, Silver Creek Estates; Tiffanie Northrup-Robinson

Tiffanie Northrup-Robinson, County Planner, reviewed the following staff report regarding a request for Special Exception from Paul and Stacy Kraus on lot SL-H-498 in Silver Creek Estates and asked that a public hearing be conducted prior to taking any action.
STAFF REPORT

To: Summit County Council
From: Tiffanie Robinson, County Planner
Date of Meeting: February 5, 2020
Type of Item: Special Exception - Public Hearing, Possible Action
Process: Legislative Review

RECOMMENDATION: It is staff's finding that the project does meet the minimum standards for approval of a Special Exception as found in the Snyderville Basin Development Code. Staff recommends that the County Council review and approve the application according to the findings of fact and conclusions of law in this staff report.

Project Description

Project Name: Kraus Septic Special Exception
Applicant(s): Paul and Stacy Kraus
Property Owner(s): Paul and Stacy Kraus Family Trust
Location: 7316 Whileaway Road
Zone District: Rural Residential (RR)
Parcel Number and Size: SL-H-498, 2.40 Acres
Type of Process: Special Exception
Final Land Use Authority: Summit County Council

Proposal

The applicant requests that the County Council grant a Special Exception from Snyderville Basin Development Code Section 10-4-2.C to reduce the prohibition on septic tanks within 200 feet from a wetland. The applicant proposes to replace the existing conventional septic system with an advanced/alternative system. The new system will serve the existing single family home and addition of a 1,000 square foot accessory dwelling on the site EXHIBIT A.

The County Council has final decision authority for a Special Exceptions.
Background

Paul and Stacy Kraus are owners of platted lot SL-H-498 located at 7316 N. Whileaway Road.

- The lot is approximately 2.40 acres in size.
- Snyderville Basin Development Code Section 10-4-2.C prohibits septic tanks within 200’ of a wetland.
- There is an existing single family dwelling on site that was constructed in 2007.
- The existing home is served by a conventional septic system.
- In 2018, the applicants proposed an accessory structure with a 1,000 accessory dwelling unit above.
- The existing tank did not have capacity to serve the accessory dwelling.
- The applicants were granted a building permit for the accessory structure but not the accessory dwelling.
- The applicant proposed replacing the existing conventional system with an advance system to serve the existing single family dwelling and proposed accessory dwelling.

Kraus Special Exception – Summit County Council – February 5, 2020
• The proposed advanced septic system would be located within the 136’ of the wetland area.
• The Summit County Health Department has given preliminary approval for the proposed alternative/advanced septic system to be installed within 136’ of the wetland.

The applicant’s property is a rectangular lot that is essentially flat. The lot is surrounded on all sides by lots with a similar size, shape and slope.

Nathan Brooks from the Health Department has been working with the applicant’s contractor to review preliminary design for an advanced technology septic system. Additionally, Rocky Pace has confirmed that the new system is not going to be located within Summit County Area 3 well protection area EXHIBIT B.

Analysis and Findings

The standards required for granting a Special Exception are set forth in the Snyderville Basin Development Code Section 10-3-7, which standards are provided below. If the County Council finds that the standards are met, then a Special Exception to reduce the prohibition may be granted.

Standard 1: The special exception is not detrimental to the public health, safety and welfare. COMPLIES

Analysis: The replacement of the conventional septic system with an advanced/alternative system will significantly reduce potential contamination to ground water. The system has been located as far away from the wetland as possible.

Standard 2: The intent of the development code and general plan will be met; COMPLIES

Analysis: The intent of the development code prohibition is to protect natural waterways from contamination. The proposed advance/alternative will replace an existing conventional system on site. The applicants have setback the system as far as possible from the delineated wetland area. The intent of the protection of these waterways are being met.

Standard 3: The applicant does not reasonably qualify for any other equitable processes provided through the provisions of [the Snyderville Basin Development Code]. COMPLIES

Analysis: Per Section 10-9-10.E.5 of the Snyderville Basin Development Code, the Board of Adjustment does not have power to grant variances from provisions in Chapter 4 of the

Kraus Special Exception – Summit County Council – February 5, 2020
code. Therefore, only the County Council has authority to grant relief from the prohibition on septic tanks within 200’ of a wetland.

**Standard 4:** There are equitable claims or unique circumstances warranting the special exception. **COMPLIES**

**Analysis:** There is currently no available sewer service in this area. With the amount of wetlands on the lot, there is no available place within the Lot boundaries to place a septic system that would comply with the 200’ standard. In order to replace the existing system with an advanced system, an exception must be granted.

**Recommendation**

It is staff’s finding that the project does meet the minimum standards for approval of a Special Exception in the Snydererville Basin Development Code. Staff recommends that the County Council conduct a public hearing, review staff’s analysis and approve the special exception, according to the findings of fact and conclusions of law in this staff report.

**Findings of Fact:**

1. Summit County assessment parcel SL-H-498 is owned by Paul and Stacy Kraus Family Trust.
2. Parcel SL-H-498 was platted as part of the Silver Creek Estates Unit H Subdivision Plat.
3. Parcel SL-H-498 is located in the Rural Residential (RR) zone.
4. The lot is approximately 2.40 acres in size. The property has access from Whileaway Road.
5. A substantial portion of the lot is covered in jurisdictional wetlands delineated by the Army Corps of Engineers.
7. The applicant proposes to replace the existing conventional septic system that serves the existing residence and would serve a 1,000 square foot accessory dwelling unit.
8. The applicant is requesting to install an alternative/advanced septic system within 136’ of a delineated wetland area.

**Conclusions of Law:**

1. There is not sufficient room on this lot to maintain the 200 foot setback from delineated wetland areas that is required for septic tanks. The advanced septic system will reduce potential impacts to the surrounding groundwater as compared to a traditional septic system.
2. The intent of the development code prohibition is to protect natural waterways from contamination. The proposed replacement to an advanced septic system is located appropriately outside of the delineated wetland area.

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3. There is currently no available sewer service in this area, the new Silver Creek sewer will end more than 600 feet from this lot.
4. With the amount of wetlands on the lot, there is no available place within the lot boundaries to place a septic system that would comply with the 200’ setback standard. In order to exercise the building right on this property, an exception must be granted.

Conditions of Approval:

1. The applicant shall install an advanced type septic system more than 136’ feet from the delineated wetland boundary as shown on the attached site plan. The Summit County Health Department shall have final approval on design and location of the septic system.
2. The applicant must obtain the Low impact Permit for the Accessory Dwelling unit, prior to installation of the new advanced septic system.
3. A building permit shall be obtained from Summit County prior to any construction on the accessory dwelling unit.

Public Notice, Meetings and Comments

This item was publicly noticed as a public hearing with possible action by the Summit County Council. Notice of the public hearing was published in the January 25, 2020 issue of The Park Record. Courtesy postcards were mailed to all property owners within 1,000 feet of the subject Parcel.

Attachments

Exhibit A – Proposed Site Plan
Exhibit B – Health Dept. Information
SEPTIC SYSTEM DESIGN

CLEANOUT DETAIL

SCALE 1/2" = 1'

INTERNATIONAL PLUMBING CODE
INSTALLATION OF THE BUILDING SEWERS SHALT COMPLY WITH THE
1ANK AND THE DISTRIBUTION BOX (OR ABSORPTION SYSTEM) SHALT BE

AND POST WEDGING.
AND AT LEAST 12" DEEP.
PASE OF GRAVEL OR
INSTALLED ON A LEVEL

4" WYE
4" 45° BEND
4" PLUG
6" IRRIGATION VALVE BOX
REBAR
Molly J. Orgill
Assistant Planner
Summit County Planning
(435) 336-3153
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From: Nathan Brooks <nbrooks@summitcounty.org>
Sent: Wednesday, September 4, 2019 3:10 PM
To: Molly Orgill <morgill@summitcounty.org>
Subject: FW: Kraus Workshop Project - Health Department Approval - 7316 Whileaway Road W
Importance: High

Molly

I had a meeting the general of this project today. I believe last year we signed off on the building permit with the idea that no plumbing would go into the structure since it would be in violation with the 200’ setback within the Basin development code. However they have approached us with the attached design for an alternative/advanced septic system to plumb the current and future structure into this system. This would eliminate the old system that the house is currently utilizing (which is in violation of the 200’ setback) and would route all the waste to a new advanced technology septic system. However the only catch is the system will still only be about 137’ from the wetland, so it would require a variance from the County Council. The contractor should be reaching out to you to initiate the process, but I wanted to give you a heads up that we are
Hey Guys – happy Friday. We have been working with Ben at Alternative Solutions to come up with a system that has characteristics of others which have been approved for use in Silvercreek. This system has the capabilities to handle both the current house and the proposed supplemental space. I am attaching the plans from Ben to this email.

Are either of you (Nate/Rocky) available for a quick face to face meeting today – to discuss what Ben has proposed as well as a go-forward strategy? Brian and I can meet you at the Health Department after lunch.

See you soon!
Paul.

From: Nathan Brooks <nbrooks@summitcounty.org>
Date: Wednesday, July 31, 2019 at 7:00 AM
To: Paul Kraus <paul-kraus.com>
Cc: Rocky Pace <pace@summitcounty.org>
Subject: RE: Kraus Workshop Project - Health Department Approval - 7316 Whileaway Road W

According to code the bedroom count of 5 would require a 1500 gal., but with Summit County anything over 4000 sq ft living space will require a 1750 gallon tank.

Hope that helps.

Nate

From: Paul Kraus <paul-kraus.com>
Sent: Tuesday, July 30, 2019 3:49 PM
To: Nathan Brooks <nbrooks@summitcounty.org>
Cc: Rocky Pace <pace@summitcounty.org>
Subject: Re: Kraus Workshop Project - Health Department Approval - 7316 Whileaway Road W

Hey Nate – I hope your summer is going well. We have been moving well on the current workshop

I wanted to confirm something with you. My research shows that homes with less than 4500 sf with 5 or fewer bedrooms can have a septic tank of 1250. Is this true for Summit County?

Paul.

From: Nathan Brooks <nbrooks@summitcounty.org>
Date: Thursday, November 15, 2018 at 1:12 PM
To: Paul Kraus <paul-kraus.com>
Cc: Rocky Pace <pace@summitcounty.org>
Subject: RE: Kraus Workshop Project - Health Department Approval - 7316 Whileaway Road W

Paul

Looks like we got your building permit signed off today. If you could just let us know when you get the new sewer line installed from new structure to the existing tank. We would like to come out and inspect to make sure everything looks good and update the existing record for the system. Let us know if you have questions as you install the new portion.

Thx
Chris,

I apologize it took so long to get back to you. I have been trying to track down exactly what is going on with this project and where everything stands. I have looked up your source protection zones. The proposed project is in your zone 4 protection area for your district well and outside of all protection zones for your green field well. There is no restriction for septic systems in a zone 4 protection area. We have not issued a septic permit for the project yet, but are in the plan review stages. The plan is to abandon the old septic system and install a new alternative septic system to service the existing home as well as the accessory building. The 200’ setback from open water is a Snyderville basin development code requirement which is more strict than the Utah onsite wastewater code which only requires 100’ setback from open water with a conventional system and 50’ separation from open water with an alternative septic system. The alternative system design that has been submitted shows 136’ of separation between the drain field and the nearest portion of the designated wetland area. Putting in an alternative system and abandoning the old system will be better for the environment as well as your drinking water sources.

Let me know if you have any more questions or concerns.

Rocky Pace
Environmental Health Scientist
Summit County Health Department
85 North 50 East
Coalville, Ut 84017
Phone: 435-336-3239
Website: summitcountyhealth.org

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From: Chris Bullock [mailto:chris@scsa3.org]
Sent: Thursday, January 16, 2020 1:56 PM
To: Philip Bondurant <pbondurant@summitcounty.org>
Subject: 7316 Whileaway Rd- special exception request on new septic tank

Good morning,

Will you please look at this request for a special exception on a new advanced septic tank with in 200 ft of wetland. I would like to discuss the new source protection impact.

I believe Nathan Brooks signed off on the septic and Tiffanie in planning is doing the SpecialException public hearing.

Please give me your thoughts once you have had time to look at the plans. I believe the hearing is set for Jan 22. This is close to our district well and up stream of the drainage to our green field well.

Thank you
Chris Bullock
Summit County Service Area #3
Tiffanie Robinson

From: Rocky Pace
Sent: Friday, January 24, 2020 12:17 PM
To: Tiffanie Robinson
Subject: sl-h-498

Tiffanie,
I just copied you on my response to Chris with SCSA #3. I have completed the plan review of the system. I have sent over my plan review to the system designer requesting that he puts the drain field a little shallower to give us more separation distance from the highest anticipated groundwater. Other than that everything looks good.

Rocky Pace
Environmental Health Scientist
Summit County Health Department
85 North 50 East
Coalville, Ut 84017
Phone: 435-336-3239
Website: summitcountyhealth.org

The public hearing was opened for comment.

Ben Witt is the designer of the system and present to answer any questions. He explained the advanced system removes contaminants and does not discharge into any stream. It is inspected annually and monitored semi-annually.

Marina Nelson lives in Silver Creek. She understands the distance now at 30 feet and they want to move it 130 feet away. She asked why the County requirement is different than the State requirement. Who determines how far is the right length and what would prevent the applicant from upgrading the system and then applying for the additional building.

Hearing no other comments, the public hearing was closed.

Council Member Armstrong understands the request is non-compliant with the code, but questions if this is a special exception issue. He is also concerned about the State regulation and the Health Department sign-off on potentially every application that could be submitted. He could support improving the system farther away from the wetlands with additional conditions.

Council Member Carson added this is a judgement call that would improve the current situation with an improved system and less impact to the environment.

Chair Clyde said this would still be granting expansion of an existing entitlement that may not be in the best interest because of being out of compliance with federal water quality requirements. He would like to add a condition that the applicant shall connect to a sewer system when available.
Council Member Armstrong made a motion to approve the Special Exception for a septic system within 200’ of a delineated wetland, Paul and Stacy Kraus, lot SL-H-498, 7316 Whileaway Road, Silver Creek Estates including conditions of approval, and finding of facts and conclusions of law outlined in the staff report with additional amendments adding the current septic system is 30 feet away from the wetland and finding that the Health Department approval of an advanced system and new location is more environmentally sensitive than the current location, and a condition of approval is when a sewer connection is available in the right of way of their property they will be required to connect.

Council Member Wright seconded with all voting in favor, 4-0.

Council Comments

- Council Member Carson attended a Behavior Health meeting. She is pleased with new relationships and progress
- She attended a Park City visioning meeting on transportation ideas and alternatives
- Also attended a Board of Health meeting. She will forward the directors report
- She attended Sundance and the UAC County Officials Day at the Legislature

- Council Member Wright met with the Alzheimer’s Society working with the Utah Division on Aging and discussed elder abuse and fraud

- Council Member Armstrong noted next week is drug court graduation and the Executive Board meeting for the Snyderville Basin Recreation Advisory committee
- He felt County Officials Day at the Legislature was productive
- He announced that he will file for another term in the County Council noting some important projects that still need to be completed

- Chair Clyde received comments from Silver Creek residents about the difficulties getting their garbage picked up. He went on a ride-a-long with the collection truck
- He received another complaint about burning in Browns Canyon
- He passed out the following information for review

Manager Comments

- Manager Fisher noted March 4 is the Park City and Council transit discussion
- Public Works Director Derick Radke discussed the issues with garbage collection in the Silver Creek area. They will improve the communication and are working to mitigate any ongoing issues
The Council meeting adjourned at 7:45 p.m.

Doug Clyde, Chair

Keith Jones, Clerk