



## STAFF REPORT

**To:** Eastern Summit County Planning Commission  
**From:** Ray Milliner, County Planner  
**Date of Meeting:** January 4, 2018  
**Type of Item:** Code Amendment – Public Hearing, Possible Action  
**Process:** Legislative

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**RECOMMENDATION:** Staff recommends that the Eastern Summit County Planning Commission review the proposal to amend Chapter 11-2-2 “livestock fencing” of the Eastern Summit County Development Code, and forward a positive recommendation to the County Council.

### Proposal

Chapter 11-2-2.C of the Eastern Summit County Development Code regulates fencing of livestock as it related to nonagricultural development adjacent to an existing agricultural operation. Currently the Eastern Summit County Development Code is not consistent with the requirements in Utah State Code. The analysis section below is a communication created with the Legal Department discussing the differences between the County Code and the State Code, and pointing out some of the weaknesses of the current County regulations. In light of the discrepancy between the County Code and State Code, staff is recommending that the Planning Commission adopt changes to bring County Code into conformity with the State.

### ANALYSIS

General Rule: First, Utah follows common law with respect to fencing of livestock and places liability for trespassing livestock on the owners of the livestock. Utah Code Annotated (“UCA”), §4-25-8 states the following: “the owner of any neat cattle, horse, ass, mule, sheep, goat, or swine that trespasses upon the premises of another person, except in cases where the premises are not enclosed by a lawful fence in a county or municipality that has adopted a fence ordinance, is liable in a civil action to the owner or occupant of such premises for any damage inflicted by the trespass.” (Utah case law has also upheld this principle. In *Bastian v. King*, 661 P.2d 953 (1983), the plaintiff, a crop-owner in Garfield County, sued the defendant, the owner of cattle, for damage to plaintiff’s crops after defendant’s cattle ate and destroyed the crops. There was a dilapidated fence in place and defendant knew that the cattle might get out, but took the position that it was the plaintiff’s job to fence the cattle out. The Utah Supreme Court cited both §4-25-7 and §4-25-8 and found that, since the county did not have its own fence law on the book, then, under Utah law, the burden is on the livestock owner to prevent livestock from trespassing. The court also cited to several other Utah cases, which

have held that Utah’s fencing laws are not an unconstitutional delegation of power to counties and are not too vague).

Exceptions: There are two exceptions to application of this general rule.

First, UCA §4-25-2 gives counties the authority through ordinance to enact its own general policy within the county for the fencing of farms, subdivisions, or other private property, to allow domestic animals to graze without trespassing on farms, subdivisions or other private property. So, a county may adopt a fence ordinance that is different from the general “fence in” rule in Utah. The law allows a county to divide the county and prescribe different fencing regulations in different areas but requires that we specifically call out what constitutes a lawful fence.

Second, in 2005, the Legislature enacted an exception to the above general rule for historical livestock trails and provides a defense for an owner of livestock whose livestock damages property abutting an historical livestock trail and the abutting property is not adequately fenced at the time the trespass occurs. An “historical trail” is defined as “property over which livestock has historically traveled to or from a grazing area or market.” In these cases, the livestock owner is not liable in a civil action for damage inflicted by the trespass.

To summarize then, Utah is a “fence in” state with the exceptions for animals entering the premises from an historic livestock trail where the premise is not enclosed by an adequate fence or where a county has enacted its own fence ordinance. If no fence ordinance exists, then the county must default to Utah’s fence-in law.

### **Summit County**

Eastern Summit County: In Eastern Summit County, we have livestock fencing provisions found in Section 11-2-2 of the Development Code, its own livestock fencing law, so it, rather than the Utah code, applies. To summarize it:

First, all new, non-agricultural development immediately adjacent to an existing agricultural operation (as it’s defined in the Code) shall not be approved unless the developer or subsequent property owners assume the responsibility of fencing or paying ½ the cost to erect a fence for fencing OUT livestock.

It gets a little confusing however, because the code further states that all “major developments, including residential subdivisions, commercial and industrial operations and other projects that border agricultural lands” will be subject to the following: at the discretion of the adjoining agricultural landowner, the developer may be required to pay ½ the cost of a fence including labor and materials if the fence is a partition fence separating the two properties and the cost of the fence is reasonable. (see 11-2-2 (C) and (C)(1))

This makes little sense because all new development that isn't agricultural must fence or pay ½ for fencing but the code then says that all major development may be required to pay ½ for fencing at the discretion of the next-door agricultural owner. So what applies to new major developments or older major developments? As written, it is unclear. The code further states that the developer may, at his or her own discretion, cost, and expense, construct a perimeter fence to enclose the development. Again, how does this square with the provision regarding all new development?

The Code also talks a bit about those areas that are determined by the State Division of Wildlife Resources to be wildlife migration corridors and says that wildlife friendly fencing may be considered with the design standards as described therein.

## **SUMMARY**

It is staff's opinion that the East Side's code on livestock fencing makes very little sense as currently drafted and that it should either be amended or taken out to make the East side of the County a "fence-in" area. If we did so, it would default to the state law provisions. The Planning Commission may consider leaving in the provisions related to wildlife friendly fencing in areas that include wildlife migration corridors.

## **RECOMMENDATION**

Staff recommends that the Eastern Summit County Planning Commission review the proposal to amend Chapter 11-2-2 "livestock fencing" of the Eastern Summit County Development Code, and forward a positive recommendation to the County Council.

## **Exhibits**

Exhibit A – Proposed Code Language.

## 11-2-2: AGRICULTURE:

C. Livestock Fencing: The owner of any cattle, horse, ass, mule, sheep, goat, or swine is required to provide fencing to prevent trespasses upon the premises of another person, with the following exceptions:

(a) the animal enters the premises from an historic livestock trail, as defined in Section 57-13b-102 of the Utah State Code Annotated; and

(b) The premises that was trespassed is not enclosed by an adequate fence at the time the trespass occurs.

~~New, nonagricultural development immediately adjacent to an existing agricultural operation (defined by this title as "agriculture") shall not be approved unless the developer and/or subsequent owners of property within the development assume the responsibility for fencing or paying one half ( $\frac{1}{2}$ ) of the cost thereof for fencing out livestock in accordance with the Utah code. All major developments, including residential subdivisions, commercial and industrial operations and other projects that border agriculture lands shall be subject to the following fencing considerations:~~

~~1. At the discretion of the adjoining agricultural landowner, the developer may be required to pay for one half ( $\frac{1}{2}$ ) of the cost, including labor and materials for a fence if:~~

~~a. The fence is or becomes a partition fence separating the project site from the adjoining agricultural landowner's property;~~

~~b. The cost of the fence is reasonable for the type of fence commonly found in that particular area.~~

~~2. Notwithstanding the above fencing requirement, the developer may, at his or her own discretion, cost and expense, construct a perimeter fence to enclose the development.~~

~~3. In project areas including wildlife migration corridors or critical wildlife habitat, as determined by the state division of wildlife resources (DWR), wildlife friendly fencing may be considered with the following recommended design standards:~~

~~a. Total fence height should not exceed forty two inches (42").~~

~~b. The space between the two (2) top wires (of a wire fence) should be at least twelve inches (12") apart with the top wire preferable being a smooth wire without barbs.~~

~~c. The bottom wire should be at least thirteen inches (13") from the ground and smooth.~~