



STAFF REPORT

To: Summit County Council
From: Ray Milliner, County Planner
Date of Meeting: July 8, 2020
Type of Item: Code Amendment – Public Hearing Possible Action
Process: Legislative

RECOMMENDATION: Staff recommends that the Summit County Council review the proposal to amend Chapter 11-2-2 “livestock fencing” of the Eastern Summit County Development Code and approve the attached Ordinance.

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. Considering the discrepancy between the County Code and State Code, staff is recommending that the County Council 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 Council may consider leaving in the provisions related to wildlife friendly fencing in areas that include wildlife migration corridors.

Analysis

Section 11-5-3 of the Eastern Summit County Development Code establishes a process for amendments to the text of the Code, it states that whenever an amendment to the Code is initiated, it must be reviewed by the Planning Commission who will deliver a recommendation to the County Council. The County Council, after holding a public hearing, can approve, approve with modifications, or deny the amendment. There is no criterion.

RECOMMENDATION

Staff recommends that the Summit County Council review the proposal to amend Chapter 11-2-2 "livestock fencing" of the Eastern Summit County Development Code and approve the attached Ordinance.

Findings of Fact

1. 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.
2. Eastern Summit County is a "fence out" area, which requires that property owners build fences to keep livestock off their property.

3. 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.
4. If no fence ordinance exists, then the county must default to Utah’s fence-in law.
5. On June 20, 2019, the Eastern Summit County Planning Commission conducted a public hearing and recommended to the County Council that the existing language in the Eastern Summit County Development Code be removed.
6. If the language is removed, Eastern Summit County will default to Utah’s fence-in law.

Conclusions of Law:

1. The amendment is consistent with the goals, objectives, and policies of the General Plan.
2. The amendment will not permit the use of land that is not consistent with the uses of properties nearby.
3. The amendment will not permit the removal of the then existing restrictions which will unduly affect nearby property.
1. The amendment will promote the public health, safety, and welfare of the People of Eastern Summit County.

Exhibits

Exhibit A – Proposed Ordinance with Code Language.

SUMMIT COUNTY, UTAH
ORDINANCE NO. _____

AMENDING THE EASTERN SUMMIT COUNTY DEVELOPMENT CODE TO REMOVE SECTION 11-2-2.C LIVESTOCK FENCING FROM THE EASTERN SUMMIT COUNTY DEVELOPMENT CODE.

PREAMBLE

WHEREAS, 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; and

WHEREAS, Currently the Eastern Summit County Development Code is not consistent with the requirements in Utah State Code”; and

WHEREAS 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; and

WHEREAS, if no fence ordinance exists, then the county must default to Utah’s fence-in law; and

WHEREAS, The Summit County Council finds there is a compelling public interest that justifies the proposed amendments to the Eastern Summit County Development Code; and

Whereas, The Eastern Summit County Planning Commission conducted a public hearing for the proposed language on June 20, 2019, and;

Whereas, The Eastern Summit County Planning Commission forwarded a positive recommendation to the County Council on June 20, 2019.

WHEREAS, a public hearing was held to receive public comment and allow for the planning staff to make presentations to the public and County Council in regard to the application on July 8, 2020;

NOW, THEREFORE, the County Legislative Body of the County of Summit, the State of Utah, hereby ordains the following:

Section 1. **EASTERN SUMMIT COUNTY DEVELOPMENT CODE** The Eastern Summit County Development Code is amended as depicted in Exhibit A.

Section 2. **Effective Date.** This Ordinance shall take effect immediately after publication.

Enacted this ___ day of _____, 2020.

ATTEST:

SUMMIT COUNTY COUNCIL

Kent Jones
Summit County Clerk

Doug Clyde, Chair

APPROVED AS TO FORM

David L. Thomas
Chief Civil Deputy

VOTING OF COUNTY COUNCIL:

Councilmember Carson	_____
Councilmember Robinson	_____
Councilmember Wright	_____
Councilmember Armstrong	_____
Councilmember Clyde	_____

11-2-2: AGRICULTURE:

~~C. Livestock Fencing: 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.~~