

REGULATION NO. 2018- 05

A REGULATION OF SUMMIT COUNTY SERVICE AREA NO. 3 DECLARING ITS JURISDICTION OVER PUBLIC RIGHTS-OF-WAY WITHIN THE SILVER CREEK ESTATES SUBDIVISION, ENACTING REGULATIONS TO GOVERN THE REMOVAL OF ENCROACHMENTS ON PUBLIC RIGHTS-OF-WAY, AND REPEALING AND REPLACING ORDINANCE NO. 91-7

PREAMBLE

WHEREAS, Summit County Service Area #3 (the “**Service Area**”) is a Utah local district, existing under and by virtue of the provisions of the Service Area Act, Section 17B-2a-901, et seq. of the Utah Code;

WHEREAS, Section 2-27-1 of the Summit County Code authorizes the Service Area to operate and maintain the streets and roads located within the Silver Creek Estates Subdivision (“**Subdivision**”);

WHEREAS, on September 5, 1991, the Service Area adopted Ordinance No. 91-7, declaring its jurisdiction over public roads within the Subdivision;

WHEREAS, on March 31, 1992, the Board of Commissioners of Summit County, Utah, adopted Summit County Ordinance No. 1-197, authorizing the Service Area to “provide for the ownership and maintenance of local park, recreation, or parkway facilities and services as deemed necessary and appropriate by the Board of Trustees of the Service Area;”

WHEREAS, in order for the Service Area to maintain and operate the public rights-of-way pursuant to its mandates, the Service Area must have a process to regulate encroachments within the public rights-of-way subject to its jurisdiction;

WHEREAS, the Service Area desires to repeal and replace Ordinance No. 91-7 and adopt uniform policies and procedures to govern how the Service Area will address encroachments within public rights-of-way subject to the Service Area’s jurisdiction; and

WHEREAS, the Board of Trustees finds that it is in the best interests of the Service Area and its residents to repeal Ordinance No. 91-7 and replace it with the attached regulation, which sets forth uniform policies and procedures by which the Service Area will coordinate with Summit County to address encroachments within public rights-of-way subject to the Service Area’s jurisdiction.

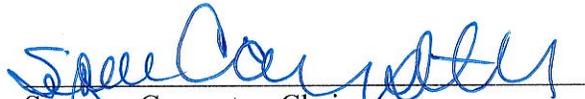
NOW, THEREFORE, be it **RESOLVED** by the Board of Trustees of the Summit County Service Area #3 that effectively immediately:

1. That Ordinance No. 91-7 is repealed in its entirety and replaced with the attached regulation; and

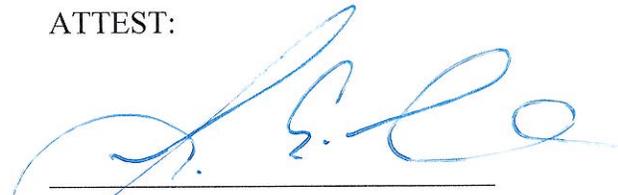
2. The Service Area's staff is directed to prepare and send any notices, form letters, or other documents the adopted, attached regulation may require.

ADOPTED AND APPROVED by majority vote at a duly called meeting of the Board of Trustees of Summit County Service Area #3 on this 16th day of April, 2018.

SUMMIT COUNTY SERVICE AREA NO. 3


Suzanne Carpenter, Chair
Board of Trustees

ATTEST:


Larry Finch, Board Clerk

VOTING

Trustee Carpenter voting	<u>yes</u>
Trustee Finch voting	<u>yes</u>
Trustee Galoostian voting	<u>yes</u>
Trustee Keblish voting	<u>yes</u>
Trustee Montgomery voting	<u>NOT PRESENT</u>
Trustee Olson voting	<u>yes</u>
Trustee Pao-Borjigin voting	<u>NOT PRESENT</u>

SUMMIT COUNTY SERVICE AREA #3

**DECLARATION OF JURISDICTION OVER PUBLIC ROADWAYS,
THOROUGHFARES, HIGHWAYS, PARKWAYS, AND TRAILS
AND
PUBLIC RIGHT-OF-WAY ENCROACHMENT REGULATION**

SECTION 1.0 Definitions

- (1.1) “Board” means the Service Area’s Board of Trustees.
- (1.2) “Emergency” means any situation requiring immediate or remedial action to protect public safety or health or to prevent injury, the loss of life, or damage to property and the environment.
- (1.3) “Encroachment(s)” means any structure, fixture, excavation, tree, shrub, motor vehicle, trailer, dumpster, debris, gravel, dirt, or any other item or action that intrudes upon, invades, encloses, blocks, or otherwise hinders the public’s ability to freely use a right-of-way without the authorization of the Service Area or other applicable authority.
- (1.4) “Entity” means any person, firm, public utility, corporation, or any other entity that places an encroachment within a right-of-way.
- (1.5) “General Manager” means the Service Area’s general manager.
- (1.6) “Notice of Encroachment” means the form letter that will be sent to an entity reasonably believed to be responsible for an encroachment.
- (1.7) “Right-of-Way” means any public right-of-way subject to the Service Area’s jurisdiction, including but not limited to public roadways, highways, thoroughfares, parkways, or trails.
- (1.8) “Roads Manager” means the Service Area’s roads manager.
- (1.9) “Service Area” means Summit County Service Area #3.
- (1.10) “Subdivision” means the Silver Creek Estates Subdivision.

SECTION 2.0 Rights-of-Way Subject to Service Area Jurisdiction

The Service Area will exercise jurisdiction over all rights-of-way subject to its jurisdiction to the extent allowed under the provisions of the Service Area Act, Utah Code Ann. § 17B-2a-901, et seq. or successor statute, all applicable ordinances of Summit County, Utah, and any other applicable laws or regulations.

The rights-of-way subject to the Service Area's jurisdiction include:

- (1) All un-built public roadways, highways, thoroughfares, parkways, or trails within the Subdivision as platted and approved by the Board of Commissioners of Summit County, State of Utah;
- (2) All roadways, highways, thoroughfares, parkways, or trails built during and subsequent to the original development of the Subdivision and dedicated to public use, even if they were built in a different location than originally platted and approved by the Summit County Commission; and
- (3) All other roads, highways, thoroughfares, parkways, or trails dedicated to public use, including, but not limited to, those dedicated or abandoned to public use pursuant to Utah Code Ann. § 72-5-104 or successor statute.

SECTION 3.0 Encroachments on Rights-of-Way Prohibited

Any and all encroachments on the rights-of-way within the Service Area are prohibited, except as otherwise provided herein.

SECTION 4.0 Emergency Exception

An encroachment on a right-of-way is permissible in an emergency, provided that the entity making the encroachment must remove the encroachment as soon as is reasonably possible and notify the Service Area's Roads Manager at the earliest possible time regarding the encroachment and the emergency that necessitated the encroachment.

SECTION 5.0 Encroachment Reporting Procedures

(5.1) Initial Investigation

- a. Investigation. Upon identifying an encroachment or receiving notice of an encroachment by anyone else, the Roads Manager will investigate the encroachment within a reasonable amount of time.
- b. Report to General Manager. If the Roads Manager determines that an encroachment exists after performing the investigation, the Roads Manager will report the encroachment to the General Manager.

(5.2) Notice to Entity Responsible for Encroachment

- a. Notice of Encroachment. Upon receiving notice from the Roads Manager of an encroachment, the General Manager will send a written Notice of Encroachment to the entity believed to be responsible for the encroachment. The General Manager does not need approval from the Board to send the Notice of Encroachment.

- b. Content of the Notice of Encroachment. The Notice of Encroachment must include the following information:
- i. The time and date when the encroachment was identified;
 - ii. The location of the encroachment;
 - iii. A description of the encroachment, including photographs where possible;
 - iv. The entity reasonably believed to be responsible for the encroachment;
 - v. An explanation of why the Service Area believes an encroachment exists;
 - vi. Response options for the entity believed to be responsible for the encroachment as described in Section 5.2(c) below;
 - vii. Contact information and instructions for the entity to use in contacting the General Manager regarding the Notice of Encroachment;
 - viii. A notification that a copy of the Notice of Encroachment has also been sent to the applicable officials with Summit County's Public Works Department and Attorney's Office; and
 - ix. An explanation that the Service Area will recommend enforcement procedures from Summit County if the entity fails to respond to the Notice of Encroachment or fails to provide a valid objection to the Notice of Encroachment within the specified time period.
- c. Response to Notice of Encroachment. An entity that receives a Notice of Encroachment will be given the following options in responding to the Notice of Encroachment:
- i. Remove the encroachment and provide evidence to the General Manager that the encroachment has been removed;
 - ii. Inform the General Manager of the steps and associated timeline that the entity will take to remove the encroachment; or
 - iii. Object to the Notice of Encroachment with supporting information and documentation on one or more of the following grounds:
 - 1. The encroachment is justified, either through an emergency or other similar necessity;
 - 2. There is no encroachment;

3. The entity that received the Notice of Encroachment is not responsible for the encroachment; or
 4. Any other legal reason that justifies the encroachment.
- d. Timely Response. The entity that receives the Notice of Encroachment must deliver a written response to the General Manager within 14 days of the date the Notice of Encroachment was sent.
 - e. Notice of Encroachment Records. The General Manager will maintain records of every Notice of Encroachment the General Manager sends to an entity and any responses received to each Notice of Encroachment.

(5.3) Board's Final Decision on Notice of Encroachment

- a. General Manager's Duty to Keep Board Informed. The Board is not required to be involved in every Notice of Encroachment action, but the General Manager should keep the Board reasonably informed of the General Manager's actions relating to Notice of Encroachments.
- b. General Manager's Duty to Notify Board of Violations. In the event that the General Manager determines that an entity reasonably believed to be responsible for an encroachment (1) did not respond to the Notice of Encroachment within 14 days, (2) did not provide satisfactory evidence that the encroachment would be removed or failed to remove the encroachment within the time frame the responsible entity provided to the General Manager, or (3) did not provide a valid objection to the Notice of Encroachment, the General Manager will notify the Board of the responsible entity's violation and provide the Board with the entity's response to the Notice of Encroachment, if any.
- c. Ultimate Decision Maker. The Board is the ultimate decision-maker in determining whether to request enforcement from Summit County. Upon receiving notification from the General Manager of an encroachment violation as stated in Section 5.3(b), the Board will review the matter and determine whether to seek enforcement from Summit County.
- d. Written Request to Summit County. If the Board determines to request enforcement from Summit County, the Board will direct the General Manager to request enforcement from Summit County in writing, and Summit County will thereafter take over the matter.
- e. Notice to Entity Responsible for Encroachment. At the same time, or within a reasonable amount of time after the General Manager sends the written request for enforcement from Summit County, the General Manager will send a letter to the entity responsible for the encroachment, informing the responsible entity that the matter has been turned over to Summit County.

SECTION 6.0 Summit County Responsibilities

Summit County owns the roads within the Service Area and is responsible for patrolling the roads and removing encroachments on the roads pursuant to Section 7-6-1, *et seq.* of the Summit County Code. This regulation does not prohibit Summit County from patrolling the roads or undertaking enforcement actions within the Service Area separate and apart from the procedures established by this regulation.

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