The Regular Meeting of the
Brian Head Town Council
www.zoom.us (click on link)
Via Zoom Meeting ID# 862 8863 6680

TUESDAY, NOVEMBER 10, 2020 @ 1:00 PM

AGENDA

A. CALL TO ORDER
B. PLEDGE ALLEGIANCE
C. DISCLOSURES
D. APPROVAL OF THE MINUTES: October 27, 2020, Town Council Meeting

E. REPORTS / PUBLIC INPUT ON NON-AGENDA ITEMS. Public input is limited to three (3) minutes.

F. AGENDA ITEMS

1. **FOOD TRUCK RESOLUTION.** Bret Howser, Town Manager. The Council will consider a resolution temporarily suspending restrictions on food trucks in Brian Head.

2. **CORONAVIRUS RELIEF FUND EXPENDITURE DISCUSSION.** Shane Williamson, Town Treasurer. The Council will hold a discussion on expenditures related to the Coronavirus Relief Fund.

3. **DISCUSSION ON PROPOSED AMENDMENTS TO TITLE 8-3-3, WORKING WITHIN THE TOWN'S RIGHTS-OF-WAY EXEMPTION.** Aldo Biasi, Public Works Director. The Council will discuss a proposed amendment to the Town Code allowing an exemption to work within the Town's rights-of-way after October 15th.

4. **GRADING PERMIT DISCUSSION.** Bret Howser, Town Manager. The Council will hold a discussion on a provision requiring a building permit prior to issuance of a grading permit.

5. **POTENTIAL FUTURE AGENDA ITEMS.** The Council will discuss potential items for future agendas.

G. ADJOURNMENT

Date: November 6, 2020

Available to Board Members as per Ordinance No. 11-003 authorizes public bodies, including the Town, to establish written procedures governing the calling and holding of electronic meetings at which one or more members of the public board may participate by means of electronic communications. In compliance with the Americans with Disabilities Act, persons needing auxiliary communications aids and services for this meeting should call Brian Head Town Hall @ (435) 677-2029 at least three days in advance of the meeting.

CERTIFICATE OF POSTING

I hereby certify that I have posted copies of this agenda in three conspicuous locations; The Mall, Post Office, and the Brian Head Town Hall and have posted copies on the Utah Meeting Notice Website and the Brian Head Town website and have caused a copy of this notice to be delivered to the Daily Spectrum, a newspaper of general circulation.

Dated this 6th day of November 2020.
Nancy Leigh, Town Clerk

Brian Head Town Council Update

November 1, 2020

BRIAN HEAD MARSHALS OFFICE:

Happy Halloween! We hope that everybody had a safe and enjoyable October. There was a blue moon this month which in public safety usually makes the hair on the back or our neck stand up. But all and all we made it through the month safely and still have all of our fingers and toes.

This month we responded to a tragic incident in the Meadow Lakes area. A young mother/grandmother took her life. Most of the Marshals are acquainted with the family. It has been on our minds a lot and we hurt for the Stones family. It always hurts a little more when it strikes so close to home. Mental illness is a tough thing and we are right on the front lines of battling it. The marshal's office is still trying to train and study the different effects of mental illness. We will keep our awareness of it heightened not only for the public which we serve. But also for our own personnel. It is a difficult battle to detect, but we are dedicated to doing our part to assist in whatever way we can.

Incident numbers are still tracking higher than usual with 61 total incident reports in the month of October and a total for the year of 844. Last year we totaled 953 incidents which was a record number. We have actually set record numbers each year for the last 10 years. If we keep up the trend, we will probably be setting a record number again for 2020 of around 1,000 incidents. I don't think any of us ever thought we would be handling 1,000 incidents a year in Brian Head yet here we are. It's interesting also to note that back in March and April when COVID hit. Our incident numbers were very low due to most people staying home and safe. But as the year progressed we all noticed the influx of visitors that was bigger than anybody could have predicted.

The Deputies have been able to take some personal leave this past month which is greatly needed. We are energized and now preparing for winter.

BRIAN HEAD FIRE DEPARTMENT:

As of November 1st, we are no longer in any fire restrictions. All orders county wide has been rescinded including ours here in Brian Head. However, we are still in a no burning season. This means that people can have campfires. But we are still not

allowing open burns such as slash and debris piles. I hope this changes with some moisture hopefully coming in the near future. We have numerous piles to burn but are still reluctant to do so even with the cooler temperatures.

I was notified today that a bid award has been given to A-OK tree service. They will start chipping this week and hopefully be done by November 20th.

I am very happy to notify you that the newly purchased (Used) ladder truck has now passed all inspections. We had the ladder tested and inspected and now the pump has been tested. All have passed with flying colors. Not that I expected anything less…

With COVID causing some struggles with training we have had to delay some of the types of training we normally do as a fire department. But with that, we have still been training on a more modified basis. We realize that we are the first defense against all sorts of public safety issues. We want to be sure we are still up to speed on our training and in keeping our residents and visitors safe when they come to Brian Head. We will continue with training and hope that we soon are able to be on a more normal training program. I am so thankful we have the volunteer staff that we do. They realize some of the dangers of training, but are still willing to take the calculated risk in meeting often to train and certify as public safety officials.



Midway Fire November 3, 2020




BRIAN HEAD FIRE DEPT.



Pump testing Truck 711 October 2020

Public Works Department Update
November 10, 2020

Time is up, as I write this report winter storms are predicted for the weekend to bring snow fall to the mountain. Public Works has had a great run this construction season completing most of the tasks that have been assigned to us. The remaining task will be worked on as we move into the winter months. The following are updates on the projects that we have been working on.

STREETS

- Planning for the 2021 Streets project has begun with staff marking out patches that will need to be added to the design
- Crack seal has been competed for this year for next year's street project and also the Town Hall parking lot.
- The top course of road base has been applied to Look Out Circle
- Millings have been applied to the surface of Snowflake after the contractor completed their work.
- The rest of the milling project has been completed.

CULINARY

- Equipment for the million-gal pump station been installed and turned on.
- Town Hall well work has been completed with the new pump and motor installed.
- Staff is waiting for a new PRV valve to arrive and will in stall on Steam Engine and Forest. The current valve is working, but it was missed when the Prv project last year was complete.
- Staff completed a water leak in front of Apple Annie's. Repairs have been made to the asphalt and the patches have been cracked sealed.

TRAILS / PARK

- The paving for the Phase Two trail project has been completed. The sections in front of the Condos will proceed forward in the spring with UDOT having approved the drainage permit for the Condos.
- Cement pads for pavilions have been poured on Tuesday the 8th.
- The pond continues to fill after the release of water for the farmers this year.

- Staff is working with Alpha and Landmark on gathering data and preparing a plan to move forward after the pond slid.
- The next section of Zig Zag fence has been installed.
- Planning for a grant application park project has been completed and submitted

SEWER

- The jetter truck has arrived after the repairs have been completed. Staff put it to work cleaning a short section on the highway and helped Parowan City on a 911 sewer blockage that was beginning to flood homes.
- As part of the Capital Facilities project, Staff and Alpha have collected data on the exposed manholes to be added to the GIS system. We look to continue this work as we can with weather permitting
- Fiberglass sewer markers have been installed on the manholes that have been located.

IN-HOUSE PROJECTS

Public works will continue to work on in-house projects and maintaining equipment as needed. If you have any questions or concerns, please do not hesitate to call.



Staff assisting Parowan City with a sewer blockage that was causing damage to Homes



Staff having lunch with the Parowan UDOT shed employees. Keeping up good relations between the two crews has been a tremendous help to both the Town and UDOT



New in line pumps installed by staff at the Million-Gal pump Station. Wiring completed by Marshall Evans Electric



Town Hall Parking lot being cracked sealed by Spencer Asphalt



New pavilion pad at Bristlecone Pond.



Millings being applied to Spruce Street.

STAFF REPORT TO THE TOWN COUNCIL

SUBJECT: Mobile Food Vendor Resolution
AUTHOR: Bret Howser
DEPARTMENT: Administration
DATE: November 10, 2020
TYPE OF ITEM: Legislative Action

SUMMARY:

The Town Council will consider an ordinance suspending certain restrictions on mobile food vendors until May 1, 2021.

BACKGROUND:

Brian Head Town currently restricts the operation of mobile vendors (including "food trucks") to construction sites and special events. With the ongoing pandemic requiring social distancing and reduction of seating in dining area, it is anticipated that food options will be limited for Brian Head visitors during the 2020-21 ski season. Due to these circumstances, Council is being asked to consider a temporary allowance for food trucks to operate outside of a construction site or special event to better accommodate our guests with grab-and-go food options during COVID-19.

ANALYSIS:

The attached resolution would:

- Suspend requirements for food trucks to operate in conjunction with a construction site or special event
- Suspend requirements for food trucks to move every two hours
- Set and expiration of these suspensions as May 1, 2021

It is anticipated that during this interim, the Council will revisit the mobile vendor licensing ordinances and alter them to be in better accordance with State statute while preserving the long-term interests of the Town.

FINANCIAL IMPLICATIONS:

Staff has been informed by the Utah State Tax Commission that any food trucks which are not based in Brian Head (i.e.: their inventory or kitchen is elsewhere) will not receive sales taxes for sales from that food truck. Therefore, it is possible that some sales taxes from sales which would have otherwise occurred at permanent establishments in Brian Head would now be remitted to other cities. Staff does not anticipate that this will be a significant number. We are requesting that food trucks operating in Brian Head obtain a business license listing Brian Head as their home base for sales tax purposes, but we cannot require this under state statute.

BOARD/COMMISSION RECOMMENDATION:

N/A

STAFF RECOMMENDATION:
Staff recommends approval of the proposed resolution

PROPOSED MOTION:
I move to adopt resolution number 498 suspending portions of the town ordinance regulating mobile vendors and allowing mobile food vendors to operate in Brian Head disassociated with a construction site or a special event until May 1, 2021.

ATTACHMENTS:
A – Mobile Food Vendor Resolution

BRIAN HEAD TOWN

RESOLUTION NO. ___

A RESOLUTION SUSPENDING PORTIONS OF THE TOWN ORDINANCE REGULATING MOBILE VENDORS AND ALLOWING MOBILE FOOD VENDORS TO OPERATE IN BRIAN HEAD DISASSOCIATED WITH A CONSTRUCTION SITE OR A SPECIAL EVENT UNTIL MAY 1, 2021

WHEREAS, §3-2A-21-2 of the Town Code restricts mobile vendors to operating on construction sites or as part of a special event; and

WHEREAS, the ongoing COVID-19 pandemic and associated State of Utah guidelines and regulations require social distancing, including limitation of dining room seating and capacity; and

WHEREAS, it is anticipated that there will be a substantial volume of visitors to Brian Head during the 2020-21 ski season as people continue to seek outdoor recreational opportunities during the ongoing pandemic; and

WHEREAS, Brian Head Town has a vested interest in providing dining options to Brian Head visitors and guests; and

WHEREAS, it is not anticipated that the existing permanent dining establishments in Brian Head will have sufficient capacity to serve our guests given social distancing guidelines; and

WHEREAS, the Town Council has determined it is in the Town's best interest to attract temporary food options for our 2020-21 ski season guests.

NOW THEREFORE BE IT RESOLVED by the Brian Head Town Council of Brian Head, Iron County, State of Utah, any provisions in §3-2A-21-2 of the Brian Head Town Code which restrict mobile food vendors to locating only on construction sites or special events are suspended, along with any provisions requiring mobile food vendors to relocate every two hours, are hereby suspended until May 1, 2021. During this period, mobile food vendors may obtain a license to operate on private property in Brian Head with the permission of the property owner regardless of whether they are associated with a construction site or a special event. All other provisions of §3-2A-21-2 remain as presently constituted.

DATED this 10th day of November 2020

TOWN COUNCIL VOTE:

Mayor Clayton Calloway	Aye____	Nay____
Council Member Larry Freeberg	Aye____	Nay____
Council Member Lynn Mulder	Aye____	Nay____
Council Member Kelly Marshall	Aye____	Nay____
Council Member Shaun Kelly	Aye____	Nay____

BRIAN HEAD TOWN

_____
Clayton Calloway, Mayor

ATTEST:

_____
Nancy Leigh, Town Clerk (SEAL)

Attachment "A"
Brian Head Mobile Vendor Ordinance
Suspended provisions are highlighted

3-2A-21-2: MOBILE VENDORS:

It shall be unlawful to sell food, flowers, agricultural products, ice cream, candy, popcorn or other goods or merchandise from tents/canopies, push carts, mobile wagons, trailers or motor vehicles (collectively "Mobile Vendors") on private or public property, except as authorized and licensed under this article. This section shall in no way govern temporary commercial structures, which are instead regulated under the Land Management Code and the International Building Code. Consistent with Utah Code §10-1-203(5), a license is not required for a business that is only operated occasionally and operated by an individual under the age of 18 (such as a lemonade stand).

A. Sales At Construction Sites:

1. A business license may be obtained for a mobile vendor to conduct business on private property as a service to construction sites. Licensees must list the construction sites they intend to serve on the license application, and update the list as needed throughout the year.
2. Licensees shall have written permission from the owner of the private property to conduct business on that property and shall not remain at any one site for more than a two (2) hour period per day.

B. Sales Within Public Rights Of Way: Vending within any public right of way is strictly prohibited (except as allowed under the terms of a special event permit).

C. Special Events: Mobile vendors may operate on private land under a special event permit and with the permission of the property owner according to conditions of the special event permit. If the special event permit allows for the event to operate within a specific public right-of-way, mobile vendors associated with that special event may operate within the public right-of-way according to the conditions of the special event permit.

D. Terms And Conditions: Mobile vendors may obtain a license subject to the following terms and conditions:

1. License Fee: The license fee for a mobile vendor business license shall be as set forth by the consolidated fee schedule.
2. Health Department Approval: All mobile vendors serving food or garden produce for human consumption must have the means of preparing, keeping and serving the foods approved by the health department. This approval, in writing, must be submitted as part of the license application. Withdrawal of health department approval for sanitary or health violations is grounds for revocation of the Town license.
3. Fire Inspection Approval: All mobile vendors which meet Utah State guidelines for a "Food Truck" serving food for human consumption must submit proof of inspection when apply for a business license.
4. Limitation On Locations: Mobile vendors shall be restricted to construction sites or special events. Street vending on town rights of way during construction or

other situations creating a public health or safety concern may be prohibited by the building department or public safety department.

5. Mobile Vendors Required To Move Location: It shall be unlawful for any mobile vendor to obstruct pedestrian or vehicular traffic on streets or sidewalks. Vendors shall move a distance of at least two hundred fifty feet (250') from their prior location every two (2) hours during which they are conducting business except as allowed under the conditions of a special event permit. It shall be unlawful for any mobile vendor to conduct business in a location that impairs reasonable pedestrian or vehicular access to any adjoining building, alley, yard or other property.

STAFF REPORT TO THE TOWN COUNCIL

SUBJECT: Coronavirus Relief Fund Expenditure Discussion
AUTHOR: Shane Williamson
DEPARTMENT: Administration
DATE: November 10, 2020
TYPE OF ITEM: Discussion

SUMMARY:

The Council will discuss possible expenditures related to the Coronavirus Relief Fund (CRF), as permitted by the Federal Coronavirus Aid, Relief, and Economic Security (CARES) Act.

BACKGROUND:

The Federal Government provided $1.25 billion to Utah state and local governments through the CRF included in section 5001 of the CARES Act. Based on the distribution formula in the CARES Act, $934.8 million was paid to the State of Utah (State), $203.6 million was paid directly to Salt Lake County, and $111.6 million was paid directly to Utah County. State and local governments may only use the CRF payments to respond to the COVID-19 pandemic. The State of Utah distributed a portion of its $934.8 million payment to counties and municipalities outside of Salt Lake County and Utah County that did not receive a direct allocation. During the July 14, 2020 Brian Head Town Council Meeting, the Town Council approved the contract with the State of Utah for the Town to receive $8,334.00 of said funds by means of three (3) separate tranches equaling $2,778.00 each. The Town received $2,778 in August 2020, and $2,778 in October 2020. Since then, the State of Utah revamped the program and held back funds from many entities to push more funding toward Utah's resort cities. As such, Brian head Town receive $78,988.00 from the third tranche rather than the original $2,778, bringing the total to $85,544.00. The $78,988 was received in late October 2020.

ANALYSIS:

Given the additional funding, it is important to have a discussion concerning the best ways to spend the funds for the benefit of the Town's battle against Covid-19. The State of Utah requires that we have a plan in place to spend the funds by November 30, 2020, and that we have the expenditure complete by December 30, 2020. That said, the CRF and the CARES Act require that the funds only be used to cover certain costs. For example, recipients of the funds are required to assure that the costs:

1) are necessary expenditures incurred due to the public health emergency with respect to the Coronavirus Disease 2019 (COVID–19);
   a) The requirement that expenditures be incurred "due to" the public health emergency means that expenditures must be used for actions taken to respond to the public health emergency.
   b) Funds may NOT be used to fill shortfalls in government revenue to cover expenditures that would not otherwise qualify under the statute.
   c) The expenditure is reasonably necessary for its intended use in the reasonable judgment of the government officials responsible for spending the funds

2) were not accounted for in the State's or recipient's budget most recently approved as of March 27, 2020 (the date of enactment of the CARES Act) for the recipient; and
   a) A cost meets this requirement if either (a) the cost cannot lawfully be funded using a line item, allotment, or allocation within that budget or (b) the cost is for a substantially different use from any expected use of funds in such a line item, allotment, or allocation.
   b) The "most recently approved" budget refers to the State's or recipient's enacted budget for the relevant fiscal period for the recipient, without taking into account subsequent supplemental appropriations enacted or other budgetary adjustments made by the recipient in response to the COVID-19 public health emergency.
   c) A cost is not considered to have been accounted for in a budget merely because it could be met using a budgetary stabilization fund, rainy day fund, or similar reserve account.

3) were incurred during the period that begins on March 1, 2020 and ends on December 30, 2020.
   a) A cost is "incurred" when the recipient has expended funds to cover the cost.

4) All police salary expenditures are to be assumed necessary as it relates to Covid-19; and, therefore, may be reimbursed from the CRF distributions.

So far, the Town has attributed the following expenditures to the CRF, not including police salaries:

- Zoom Meeting Subscription: $123.57
- Meeting Owl, speakers, and monitor for remote Council meetings: $1,357.25
- Cleaning supplies, masks, hand sanitizer: $60.00
- Portable electronic message board rental (please wear masks): $2,300.00
- **Total: $3,840.82**

Considering the above expenditures, staff anticipates another $500 of similar expenses between now and December 30, 2020, bringing the total up to roughly $4,350.00. Therefore, staff is now wanting to open the discussion with Council to consider a few larger expenditures to use the remaining $81,194.00 ($85,544 - $4,350) prior to the end of December 2020.

FINANCIAL IMPLICATIONS:

The CRF revenue will require a budget adjustment of $85,544.00 in line 10.3341, and all expenditures will require budget adjustments totaling the $85,544.00 in various expense accounts. Once we finalize the discussion of where to spend the funds, staff will come back with all budget adjustments in a subsequent meeting.

BOARD/COMMISSION RECOMMENDATION:

N/A

STAFF RECOMMENDATION:

Staff recommends that Council hold a discussion concerning avenues to expend the funds in accordance the guidelines set forth in the Analysis section. As such, staff brings to the discussion the following recommendations:

- Portable electronic message boards ($15k - $30k)
- Additional shuttle to help ensure social distancing ($20k - $30k)
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-
-

PROPOSED MOTION:

Discussion item with staff direction, no legislative action.

ATTACHMENTS:

N/A

STAFF REPORT TO THE TOWN COUNCIL

SUBJECT: Discussion on Code Amendment to Title 8-3-3 Building Development – Working within the Rights-of-Way
AUTHOR: Aldo Biasi, Public Works Director
DEPARTMENT: Public Works
DATE: November 10, 2020
TYPE OF ITEM: Discussion

SUMMARY:

The Council will once again discuss proposed changes to the Town Code, Title 8, Building and Development Regulations, Chapter 3, Excavations, Encroachments, and Structures within Rights of Way. Section 8-3-3 (listed under attachments) which defines the winter season for the construction of underground utilities inside the Town Right of Way. Staff is recommending changes to this section of the code for clarification purposes and flexibility for both staff and contractors.

BACKGROUND:

During the October 27, 2020 Council meeting, staff proposed language that would change the permit submission date to September 30th if a contractor wished to extend their work into the winter season. The Council directed staff to stay with the October 15th date and propose another mechanism that would allow the Town to either shut down or extend time to contractors working within the Town right of way, depending on the weather. The motivation behind the shorten date was to allow the Town the flexibility to ensure all work within the rights-of-way would be completed if an early freeze took place thereby protecting the Town's infrastructure. This would also allow an extension to the contractor's if the weather were mild.

Due to the extent of the mild weather (which is changing quickly), the staff has been approached by contractors asking if they could be permitted to extend their work season in Town's rights-of-way past the current cutoff date of October 15th. In the past, due to this section, the staff has not granted any extensions of digging in the rights-of-way past the cutoff date unless deemed an emergency. Although, it has been generally understood that the Public Works Director or his/her designee would be able to override this code and allow digging depending on weather or other circumstances. The following section of Town Code Title 8-3-3 states:

No permits for road excavations or other excavations within ten feet (10') of the edge of the Town road shall be issued during the winter season, except in emergency situations. For the purposes of this section, "winter season" begins October 15 of each year and ends on May 15 of the succeeding year

ANALYSIS:

With the direction of the Council, staff is now proposing the following changes to the Town Code for working within the rights-of-way:

No permits for road excavations or other excavations within ten feet (10') of the edge of the Town ~~road~~ rights-of-way shall be issued during the winter season, except in emergency situations. For the purpose of this section "winter season" begins (October 15th of each year and ends on May 15th of the succeeding year, except in the following situations

- The Public Works Director or his/her designee has issued and extension for work to continue beyond October 15th. Extensions will need to show a plan of work and a completion date.

- All permits (normal and extensions) can be revoked if deemed necessary by the Public Works Director or his/her designee with a 24-hour notice to the contractor.

These proposed changes to the Town Code will give staff the flexibility to work with contractors on years such as this one where there has been a good run of mild weather and would also give staff a way to stop work easier if the weather is changing earlier than October 15th. All normal permits that are working in the Town's rights-of-way will be required to be completed by October 15th.

FINANCIAL IMPLICATIONS:
N/A

BOARD/COMMISSION RECOMMENDATION:
N/A

STAFF RECOMMENDATION:
Staff recommends Council direct staff to make the following changes to the Town Code listed above and bring back an ordinance for adoption.

PROPOSED MOTION:
Discussion item only.

ATTACHMENTS:

A - Town Code Title 8-8-3: (current)

Title 8 – Building & Development Regulations

Chapter 3

EXCAVATIONS, ENCROACHMENTS AND STRUCTURES WITHIN RIGHTS OF WAY

8-3-1: COMPLIANCE, PERMIT REQUIRED:
8-3-2: EXCEPTION FOR EMERGENCY CONDITIONS:
8-3-3: WINTER SEASON:
8-3-4: APPLICATION FOR PERMIT:
8-3-5: TERM OF PERMIT:
8-3-6: FEES:
8-3-7: COMPLETION BOND:
8-3-8: ENGINEERING STANDARDS AND REQUIREMENTS:
8-3-9: SUPERVISION AND INSPECTION:
8-3-10: FAILURE TO COMPLY:
8-3-11: PENALTY:

8-3-1: COMPLIANCE, PERMIT REQUIRED:

A. It shall be unlawful for any person, firm, public utility or corporation to place, make, enlarge or change any excavation, driveway, encroachment or structure within the right of way of any town road without complying with the provisions of these regulations and obtaining a permit as provided for herein.

B. It shall be unlawful, and punishable as provided for herein, to make any excavation or to place any encroachment or structure in any town right of way not described in the approved permit application or which exceeds in size the dimensions, or which does not conform to the conditions described in said application. (Ord. 07-014, 11-13-2007)

8-3-2: EXCEPTION FOR EMERGENCY CONDITIONS:

Emergency excavations and encroachments may be commenced without prior permit if the reason for the excavation or encroachment is to prevent loss of life or damage to property which appears to be imminent if the action is delayed by waiting to secure said permits. In such emergency situations, those making the excavation or encroachment must contact the Public Works Director's office and/or the town engineer's office at the earliest possible time, but in no case later than the first working day following the emergency work in order to secure a formal

permit. None of the provisions of these specifications are waived for emergency situations except for the prior permit requirement. (Ord. 07-014, 11-13-2007)

8-3-3: WINTER SEASON:

No permits for road excavations or other excavations within ten feet (10') of the edge of a town road shall be issued during the winter season, except in emergency situations. For the purposes of this section, "winter season" begins October 15 each year and ends May 15 of the succeeding year. (Ord. 07-014, 11-13-2007)

8-3-4: APPLICATION FOR PERMIT:

Applications for all permits shall be made by the person, firm, public utility or corporation actually doing the work. Applications for all permits shall be made to the Public Works Director's office as provided, and shall describe the excavation, encroachment, structure or driveway, and shall have a drawing of the location of the intended excavation, encroachment, structure or driveway, the pertinent dimensions thereof, the purpose therefor, the person, firm, public utility or corporation doing the actual work, and the name of the person, firm, public utility or corporation for whom or by which the work is being done, and shall contain an agreement that the applicant will comply with all ordinances and laws of the town and the state relating to the work to be done. A traffic control plan, conforming to the manual of uniform traffic control devices (MUTCD), shall be submitted with all applications which involve excavations within a town road right of way. The application shall also provide for an agreement that the applicant shall indemnify the town for any loss, liability or damage that may result from or because of the making, placement, existence or manner of guarding or constructing any such excavation, encroachment, structure or driveway. (Ord. 07-014, 11-13-2007)

8-3-5: TERM OF PERMIT:

All permits issued pursuant to these regulations shall be valid for a period of sixty (60) days from issuance, except that no permit shall extend into the winter season as outlined in section 8-3-3 of this chapter. A copy of the permit issued shall be made available by the applicant at all times when work is under way. (Ord. 07-014, 11-13-2007)

8-3-6: FEES:

A review fee, in the current amount as identified in the consolidated fee schedule, shall accompany each application for a permit, unless other fee payment arrangements have been approved by the town. (Ord. 07-014, 11-13-2007)

8-3-7: COMPLETION BOND:

A. Required: Applicants shall provide a completion bond to the town in the amount as identified in the consolidated fee schedule at the time the permit is approved. This may be cash, a letter of credit from an FDIC insured financial institution, or a corporate surety bond. The bond shall be valid for a period of two (2) years from the date of the construction inspection to guarantee that the condition of any permit, together with any restorative works, is completed properly (the "guarantee period"). The bond will be released upon recommendation of the town engineer and/or the Public Works Director.

B. Continual Annual Bond: Applicants for permits may secure a continual annual bond in lieu of separate bonds for each excavation. Applications for continual bonds shall be made before December 31 of each year and shall be valid for the next calendar year and be valid for a period of two (2) years.

C. Exception: Those public entities which are regulated by the state public service commission are exempt from the bonding requirements of this section, but shall still be required to obtain a permit prior to making any excavation. (Ord. 07-014, 11-13-2007)

8-3-8: ENGINEERING STANDARDS AND REQUIREMENTS:

Specific engineering standards and requirements for the enforcement of these regulations are attached to ordinance 07-014 and on file in the town office. (Ord. 07-014, 11-13-2007; amd. 2010 Code)

8-3-9: SUPERVISION AND INSPECTION:

A. Required: The Public Works Director, or his designee, shall from time to time inspect, or cause to be inspected, all work done pursuant to permits to ensure compliance with the provisions of these regulations. Notification shall be given to the Public Works Director, or his designee, at least twenty four (24) hours prior to the commencement of any work. The completion bond shall not be released until an inspection shows compliance with all applicable provisions of these regulations.

B. Driveway Encroachments: Driveway encroachments require the following inspections to ensure compliance with the standards set out in these regulations:

1. Staking Inspection: A stake or marker shall be placed at each corner of the encroachment as it intersects the road or street, and at each intersection of the driveway as it crosses the right of way or easement line. The front property corners shall also be set and marked with survey markers. This inspection is required prior to the encroachment permit being approved. The Public Works Director's office must receive at least twenty four (24) hours' notice prior to requested inspection.

2. Rough Grade Inspection: An inspection of the rough grade driveway is required prior to receiving a footing inspection by the building department. The driveway must be graded

to a point that the inspector can determine compliance with these regulations and the land management code. The footing elevation/garage floor elevation must be established prior to requesting an inspection. The Public Works Director's office must receive at least twenty four (24) hours' notice prior to requested inspections.

3. Pre-surfacing Inspection: An inspection of the driveway is required prior to surfacing (soft or hard) the driveway to determine compliance with these regulations and the land management code. In no case can a certificate of occupancy be issued without the pre-surfacing inspection, and the driveway being in compliance with this chapter and the land management code. (Ord. 07-014, 11-13-2007)

8-3-10: FAILURE TO COMPLY:

In the event of failure on the part of any person, firm, public utility or corporation to comply fully with the provisions of these regulations, law enforcement authorities and/or the Public Works Director are authorized to:

A. Initiate action by citation or information under section 8-3-11 of this chapter and/or proceed to forfeit the bond; or

B. Remove such encroachment, driveway or structure from the right of way or require such person, firm or corporation to remove the same; or

C. Give written notice to such person, firm, public utility or corporation to remove such encroachment, driveway or structure from the right of way. Such notice may be served either by personal service or by mailing the notice to the person, firm, public utility or corporation by registered mail and posting a copy thereof on such encroachment, driveway or structure for a period of ten (10) days. If such encroachment, driveway or structure is not removed within ten (10) days after the notice is complete, said authorities may remove the same at the expense of the person, firm or corporation and recover costs and expenses, and also the sum of one hundred dollars ($100.00) for each day the same remained within the right of way after notice was complete, in an action for that purpose; or

D. If such person, firm, public utility or corporation disputes or denies the existence of such encroachment, driveway or structure, or refuses to remove or permit its removal, said authorities may bring an action to abate the same as a nuisance, and if judgment is recovered by said authorities, there shall also be recovered, in addition to having the same abated, the costs of action and the sum of one hundred dollars ($100.00) for every day such nuisance remained within the right of way after notice was given for its removal in the manner provided in subsection B of this Section; or

E. Revoke, suspend, terminate, impose conditions on, or modify, in whole or in part, any permit issued to such person, firm, public utility or corporation. (Ord. 07-014, 11-13-2007)

8-3-11: PENALTY:

Any person who violates the provisions of this chapter is guilty of a class C misdemeanor and a one hundred dollar ($100.00) fine per day. Each day of a continuing violation shall be deemed a separate offense. (Ord. 07-014, 11-13-2007)

STAFF REPORT TO THE TOWN COUNCIL

SUBJECT: Grading Permit Requirements
AUTHOR: Bret Howser
DEPARTMENT: Administration
DATE: November 10, 2020
TYPE OF ITEM: Discussion

SUMMARY:

The Town Council will discuss the provision requiring a building permit prior to issuing a grading permit.

BACKGROUND:

During the 2013-14 Planning Commission review of the Land Management Code (LMC) there was much discussion regarding "scars" on the land and how we might discourage that outcome through legislation. At the time, people developing their land could obtain a grading permit whenever they were ready to clear and prep their land for building. Often, they would do so during the building season of one year with the expectation that they would get a building permit during the winter and proceed with building the structure the following building season. Occasionally, this would result in somebody clearing their lot, then circumstances changed, and they never built, leaving a "scar" on the land.

In a mountain resort town that is reliant upon the scenic beauty of the region for the local economy and property values, scarring the land is problematic. It is clearly anticipated within the vision of the General Plan to avoid scarring on the land. With this in mind, the Planning Commission recommended to the Town Council an adjustment to the standards for review for grading permits that requires a building permit to be in hand in order to obtain a grading permit for the purpose of preparing a building site. The Town Council agreed, and the adjustment was codified in the LMC in 2015.

Subsequently, staff continued to receive many requests to clear and grade lots prior to receiving a building permit for one reason or another. Staff approached the Planning Commission in 2018 to see the Commission was willing to allow a provision that would allow for a grading permit to be granted prior to a building permit with the stipulation that a revegetation bond be posted. The bond money could be used to revegetate in the even that building activity did not proceed. The Planning Commission agreed to the provision and recommended it to the Town Council. The Town Council approved the change to the LMC in February 2019, with the modification that it would only apply to residential construction. (Side note: The language that staff wrote in the code [subsequent to adoption] to reflect that the ability to bond for a grading permit prior to getting a building permit should not apply to commercial was poorly worded and currently gives the impression that the requirement to have a building permit in hand before you can get a grading permit does not apply to commercial development. But the record of the intent of the Council is clear and this will be properly administered moving forward. The language should be modified the next time the LMC is officially modified, though).

The volume of requests for grading permits without a building permit have increased dramatically this summer. People are very willing to put up the revegetation bond, but it is becoming increasingly difficult for staff to administer and monitor the clearing/grading work and ensure that these are not creating scars. At the same time, we have received complaints that the requirement is unreasonable and inconsistent with other cities/towns and may be inhibiting desired development.

Staff is initiating this conversation with the Planning Commission & Town Council to discuss whether this particular provision in the LMC is having the desired affect and whether alterations to it should be considered.

ANALYSIS:

Staff took the liberty of contacting ten cities/towns in Utah and Colorado to see how they handle this issue. Here are the results of that survey:

Do you require a building permit before grading can proceed?

	Commercial	*Residential*
Park City	Req'd	Req'd
Midway	Could do with a development plan	Permit Req'd
Alta	Not Req'd, but in practice they do require it	Not Req'd, but in practice they do require it
Springdale	Highly encouraged (not required)*	Highly encouraged (not required)
Garden City	No grading permit req'd	No grading permit req'd
Cedar	Not Req'd, but highly encouraged	Not Req'd, but highly encouraged
St George	Approved subdivision, no grading permit req'd	Can do w/ grading plan and stabilization (staff seems to have some discretion in whether to issue the permit)
Breckenridge	Req'd	Req'd
Telluride	Req'd	Req'd
Steamboat	With a development plan (reveg req'd w/o immediate build)	Not Req'd

* Foothill Residential zone basically disallowed by the grading standards b/c can only disturb 20 ft beyond bldg footprint

Staff concludes that the ski towns which are further along the evolutionary timeline strictly require building permits to be approved before grading is allowed. Typical cities/towns and less advanced resort towns do not – in fact they often don't require grading permits at all.

FINANCIAL IMPLICATIONS:
N/A

BOARD/COMMISSION RECOMMENDATION:
After discussion, the Planning Commission unanimously chose to move forward with a public hearing to alter the LMC and they anticipate making a recommendation to the Town Council to disallow the option to put up a bond and proceed with a grading permit prior to obtaining a building permit.

STAFF RECOMMENDATION:
This is purely a matter of policy preference, and staff doesn't have an official position.

PROPOSED MOTION:
No motion necessary, item is discussion/informational only

ATTACHMENTS:
N/A