

DATE TUESDAY APRIL 12, 2023

THE EMIGRATION CANYON METRO TOWNSHIP COUNCIL, STATE OF UTAH, MET ELECTRONICALLY ON TUESDAY, APRIL 12, 2023, PURSUANT TO ADJOURNMENT ON TUESDAY, MARCH 28, 2022, AT THE HOUR OF 7:00 P.M., VIA ZOOM.COM.

COUNCIL MEMBERS PRESENT: DAVID BREMS
ROBERT PINON
JOE SMOLKA, Mayor

COUNCIL MEMBERS EXCUSED: CATHERINE HARRIS
JENNIFER HAWKES, Deputy Mayor

OTHERS IN ATTENDANCE: POLLY MCLEAN, LEGAL COUNSEL
GORDON BENNETT, ADMINISTRATOR
NICHOLE WATT, DEPUTY CLERK

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Mayor Smolka, Chair, presided.

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PUBLIC MEETING

Implementation of H.B. 374 (County Sheriff Amendments)

The Council reviewed the following Resolution establishing policy and providing direction regarding the implementation of H.B. 374 (“County Sheriff Amendments”).

RESOLUTION NO. 2023-04-01

DATE: April 12, 2023

A RESOLUTION ESTABLISHING POLICY AND PROVIDING DIRECTION REGARDING THE IMPLEMENTATION OF H.B. 374 (“COUNTY SHERIFF AMENDMENTS”)

WHEREAS, the Emigration Canyon Metro Township (“Municipality”) is a municipal corporation and political subdivision of the State of Utah and, with few exceptions, has the same powers and duties as a city or town pursuant to Utah Code § 10-3c-103; and

WHEREAS, the Unified Police Department (“UPD”) was created pursuant to an interlocal agreement and currently provides law enforcement services to the Metro Townships of Copperton, Emigration Canyon, Kearns, Magna, and White City (the “Metro Townships”) as well as the Town of Brighton, unincorporated Salt Lake County (the “County”), and the Cities of Holladay, Midvale, and Millcreek (collectively, the “UPD Members”); and

WHEREAS, the Municipality, the other Metro Townships, the Town of Brighton, and the County are also members of the Salt Lake Valley Law Enforcement Service Area

("SLVLESA"), a special district (previously known as a local district)¹ that levies taxes within its jurisdiction for law enforcement services and contracts with UPD to provide law enforcement services to the Municipality and the other areas within SLVLESA's service area; and

WHEREAS, the Salt Lake County Sheriff (the "Sheriff") has served as the chief executive officer of UPD and SLVLESA since their inception; and

WHEREAS, during the 2023 Legislative Session, the Utah Legislature passed H.B. 374 with the intended purpose of dissolving UPD, raising questions about the provision of law enforcement services within the Municipality and the other UPD Members; and

WHEREAS, H.B. 374 sought to address concerns that the County Sheriff's current role as the chief executive officer of UPD and SLVLESA created a perceived conflict of interest and possible double taxation for non-UPD Members with respect to the county-wide services the Sheriff is required by law to provide to all municipalities within the County; and

WHEREAS, to accomplish its objectives, H.B. 374 effectively removes the Sheriff as the chief executive officer of UPD and SLVLESA, among other things; and

WHEREAS, effective July 1, 2025, H.B. 374 will repeal Subsection 11-13-202(4) of the Interlocal Cooperation Act (the "Title 11 Provision"), which requires the Sheriff "to provide or direct the law enforcement services provided under the [UPD interlocal] agreement;" and

WHEREAS, effective July 1, 2025, H.B. 374 will also repeal Subsections 17-22-2(1)(o) and 17-22-2(3) (the "Title 17 Provisions") within Title 17 of the Utah Code, which collectively: (1) authorize the Sheriff to serve as UPD's chief executive officer as allowed under the UPD interlocal agreement; and (2) the role of the Sheriff to serve in SLVLESA; and

WHEREAS, because UPD and its related statutory provisions are unique to the County as a county of the first class, the anticipated effect of H.B. 374 is to require the Municipality and the other UPD Members to receive law enforcement services in the same manner as municipalities located outside of the County; namely, through the creation of their own police forces, contracts with the Sheriff or another municipality for law enforcement services, or the formation of an interlocal policing service; and

WHEREAS, in the near-term, however, the Municipality and the other Metro Townships lack the statutory authority to impose property taxes or otherwise fund law enforcement services outside of SLVLESA, which may limit their ability to fund and receive law enforcement services in the same way as municipalities do that are not Metro Townships; and

WHEREAS, while H.B. 374 presents an opportunity for the Municipality and the other UPD Members to build and improve upon the law enforcement services they have received through UPD, implementing this goal will likely require more time than H.B. 374 affords, particularly if additional legislation is needed to provide the Municipality and the other Metro Townships with the same authority as other municipalities to fund law enforcement services;

¹ Effective February 27, 2023, all local districts in Utah were renamed "special districts" pursuant to H.B. 22 ("Local District Amendments").

and

WHEREAS, to ensure an orderly implementation of H.B. 374 and to provide certainty to its citizens and its law enforcement officers, the Emigration Canyon Metro Township finds that it is necessary to adopt certain positions and provide direction regarding the Council's goals and priorities for the implementation of H.B. 374; and

NOW, THEREFORE, BE IT RESOLVED, by the Emigration Canyon Metro Township Council that:

1. Direction to City Attorney: The Council directs the City Attorney as follows:
 - a. The City Attorney is authorized and instructed to engage in negotiations with UPD, the other UPD Members, SLVLESA and its members, and all other relevant persons or entities needed to implement H.B. 374 consistent with this Resolution; and
 - b. In consultation with the Mayor, the City Attorney is authorized to secure the services of any subcontractors that may be needed for the City Attorney to carry out their duties under this Resolution, including but not limited to the hiring of facilitators and economic experts to assist the City Attorney; and
 - c. The Mayor shall oversee and direct the City Attorney with respect to the implementation of this Resolution.
2. Near-Term Objectives: It is the Council's position that the development and implementation of an adequate successor to the current UPD law enforcement model will likely require more time than H.B. 374 affords, in which case:
 - a. The City Attorney is authorized and directed to negotiate a near-term law enforcement agreement or other arrangement that: (1) complies with H.B. 374 and the current statutory framework so that the Municipality will continue to receive law enforcement services following the implementation of the Title 11 Provision and the Title 17 Provisions; but (2) does not preclude the Municipality from considering and implementing other law enforcement arrangements in the long-term; and
 - b. Notwithstanding the apparent intent of H.B. 374, the Council finds that the Title 11 Provision and the Title 17 Provisions do not necessarily require the dissolution of UPD because they are specific to the Sheriff and do not modify the authority of the Municipality and the other UPD Members under Utah Code § 11-13-202 to execute interlocal agreements for law enforcement services, in which case reconstituting UPD as an interlocal policing service through a restatement of the current UPD interlocal agreement may represent the most available option for a near-term law enforcement model.
3. SLVLESA: Because the Municipality and the other Metro Townships may lack the ability to fund law enforcement services outside of SLVLESA, the Council adopts the following positions and polices related to SLVLESA:
 - a. Any law enforcement arrangement the Municipality may execute in the near-term under the current statutory framework will likely require compliance with the

current SLVLESA funding model; and

b. The Council recognizes that H.B. 374 may require the County to develop a new funding model for the countywide services the Sheriff provides, but because such funding will benefit all municipalities within the County, it is therefore separate and distinct from the property taxes SLVLESA collects and manages to fund the law enforcement services that benefit the specific unincorporated lands within SLVLESA, in which case the Council supports the development of an agreement between SLVLESA and the County to fund the policing of such lands by the Sheriff or another law enforcement agency; and

c. While the Title 17 Provisions of H.B. 374 may require the removal of the Sheriff as SLVLESA's chief executive officer, it is the Council's position that the bill does not otherwise impact or modify SLVLESA nor does it allow the County to withdrawal from or dissolve SLVLESA because: (1) the bill did not modify the withdrawal provisions that apply to special districts that provide law enforcement services; namely, Utah Code § 17B-1-505 and 17B-1-505.5; (2) those provisions only allow municipalities to withdraw from such special districts; and (3) unlike a "special service district," SLVLESA is a fully independent political subdivision of the State of Utah pursuant to Utah Code § 17B-1-103, and therefore cannot be dissolved by the unilateral action of any one of its member entities pursuant to Utah Code § 17B-1-1301, et seq.;² and

d. It is the Council's position that the funding SLVLESA collects from the County's unincorporated lands does not constitute double taxation nor qualify as a subsidy that unduly benefits the municipal members of SLVLESA because: (1) the property taxes collected from the unincorporated areas of the County are not used to provide countywide services but rather to fund the policing services the unincorporated lands require, are proportionate to the large size of the unincorporated lands, and must remain with those lands and communities rather than be comingled with the funding the County provides to the Sheriff for countywide services; (2) the municipal members of SLVLESA also contribute property taxes to SLVLESA for the law enforcement services they receive that are proportionate to their respective sizes; and (3) while the SLVLESA funding model may allow SLVLESA's member entities to reduce costs by pooling their collective resources, municipal participation in SLVLESA is voluntary and any municipality in the County, can join SLVLESA to realize these cost savings if they so choose; and

e. Because of the key role SLVLESA will play in funding law enforcement services to the Metro Townships, the Municipality calls on the SLVLESA Board of Trustees to hire a general manager and/or legal counsel as soon as possible; and

² As a special district, SLVLESA is separate and distinct from "special service districts," which are governed by Title 17D of the Utah Code. Unlike a special district, a special service district is not fully independent and is ultimately under the control of the municipality or county that created it. Cf. Utah Code § 17D-1-603(1) (authorizing counties to adopt resolutions "approving...the dissolution of a special service district.").

f. For the reasons stated above, the Council opposes any effort to withdraw or remove the County from SLVLESA or to dissolve SLVLESA; and

g. To provide the Municipality with maximum flexibility in developing a long-term successor to the current UPD law enforcement model, the Council supports the development and passage of legislation that authorizes the Municipality and the other Metro Townships to fund law enforcement services in a manner that is similar to other municipalities, in addition to the SLVLESA funding model, and instructs the City Attorney, in consultation with the Mayor, to develop such legislation for the 2024 legislative session in collaboration with the other Metro Townships and their respective city attorneys; and

h. Because of the key role that SVLESA will likely play in the provision of near-term and long-term law enforcement services to Municipality and the other members of SLVLESA, the Municipality's representative to SLVLESA is directed to: (1) to work with other members of the SLVLESA Board of Trustees to jointly request and participate in training from the Utah Association of Special Districts ("UASD") on the operation of special districts generally and the specific laws and regulations that apply to SLVLESA specifically; and (2) if a joint training from the UASD is not possible, to request and participate in individual training from the UASD or the City Attorney on the operation of special districts generally and the specific laws and regulations that govern SLVLESA specifically.

4. Direction to Representatives of the Municipality:

a. The Municipality's representatives to the UPD Board of Trustees and the SLVLESA Board of Trustees are directed to vote in accordance with this Resolution; and

b. In consultation with the Mayor and subject to the Mayor's oversight and direction, all staff and agents of the Municipality are authorized and instructed to provide the City Attorney with any assistance the City Attorney may direct or otherwise require.

5. Dissemination and Coordination:

a. If one or more of the other Metro Townships and the Town of Brighton adopt similar resolutions, the Mayor is authorized to execute and send the joint letter attached to this Resolution to the County Mayor, the Chair of UPD, and the Chair of SLVLESA; and

b. The Mayor and the City Attorney are authorized to provide copies of this Resolution to UPD, SLVLESA, the respective members of those entities, and to the public as they deem necessary and prudent; and

c. The Mayor and the City Attorney are authorized to develop and distribute any other joint communications or other strategies with the other UPD Members and members of SLVLESA as they deem necessary and prudent to implement this Resolution if such communications and strategies comply with this Resolution; and

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d. The Mayor and the City Attorney are authorized to work with the Municipality's elected representatives and any other members of the Utah Legislature to develop and pass any legislation that may be needed to implement this Resolution.

6. Coordination with the Council: The Mayor and/or the City Attorney shall update the Council on the implementation of this Resolution at each regular Council meeting until further notice.

7. Effective Date: This Resolution will take effect immediately upon its adoption and execution.

EMIGRATION CANYON METRO TOWNSHIP COUNCIL

By: /s/ JOE SMOLKA
Mayor

ATTEST:

/s/ LANNIE CHAPMAN
Clerk/Recorder

Council Member Brems, seconded by Council Member Smolka, moved to approve Resolution No. 2023-04-01. The motion passed unanimously.



THERE BEING NO FURTHER BUSINESS to come before the Council at this time, the meeting was adjourned.

MAYOR, EMIGRATION CANYON METRO TOWNSHIP COUNCIL

LANNIE CHAPMAN, METRO TOWNSHIP CLERK

By: _____
Deputy Clerk



DATE

TUESDAY

APRIL

12, 2023

