PARK CITY 1884

# PARK CITY COUNCIL MEETING
## SUMMIT COUNTY, UTAH
## NOVEMBER 20, 1997

PUBLIC NOTICE IS HEREBY GIVEN that the City Council of Park City, Utah will hold its regularly scheduled meeting at the Marsac Municipal Building, 445 Marsac Avenue, Park City, Utah for the purposes and at the times as described below on Thursday, November 20, 1997.

## AGENDA

**Work Session - City Council Chambers - Lower Level**

| | |
|---|---|
| 3:45 p.m. | Council questions and comments |
| | Review of regular meeting |
| 4:15 p.m. | Telecommunications ordinances |
| 4:35 p.m. | Business license amendments |
| 5:00 p.m. | Paid parking program |
| 5:45 p.m. | Other meeting questions/comments |

**Regular Meeting - City Council Chambers - Lower Level**

**I ROLL CALL**

**II PUBLIC INPUT**

**III COMMUNICATIONS FROM COUNCIL AND STAFF**

Resolution congratulating the Park City High School Girls Soccer Team who captured the 3A State Championship

**IV WORK SESSION NOTES AND MINUTES OF MEETING OF OCTOBER 30, 1997 AND NOVEMBER 6, 1997**

**V PUBLIC HEARING**

1. Ordinance amending Chapter 7 and Chapter 8 of the Land Management Code regarding the regulation of telecommunications facilities

2. Ordinance amending Title 4, Chapter 10, of the Municipal Code of Park City, Utah adopting a telecommunications right-of-way ordinance

3. Ordinance amending Title 4 of the Park City Municipal Code and the Business License Fee Schedule replacing a business license revenue tax with a business license fee

## VI CONSENT AGENDA

Resolution congratulating the Park City High School Girls Soccer Team who captured the 3A State Championship

## VII NEW BUSINESS

1. Ordinance amending Chapter 7 and Chapter 8 of the Land Management Code regarding the regulation of telecommunications facilities

2. Ordinance amending Title 4, Chapter 10, of the Municipal Code of Park City, Utah adopting a telecommunications right-of-way ordinance

3. Ordinance amending Title 4 of the Park City Municipal Code and the Business License Fee Schedule replacing a business license revenue tax with a business license fee

4. Consideration of paid parking program and policies in the Historic Core

5. Resolution recommending Mayor Bradley A. Olch to be appointed to the Salt Lake Olympic Committee Board of Trustees and further recommending Kenneth Bullock to be appointed to the Executive Committee of the Salt Lake Olympic Board of Trustees

## VIII ADJOURNMENT

# PARK CITY COUNCIL MEETING
# SUMMIT COUNTY, UTAH
# NOVEMBER 27, 1997

PUBLIC NOTICE IS HEREBY GIVEN that the City Council of Park City, Utah **will not** hold its regularly scheduled meeting on Thursday, November 27, 1997.

Posted: 11/17/97

PARK CITY 1884

# PARK CITY WORK SESSION NOTES
# SUMMIT COUNTY, UTAH
# NOVEMBER 20, 1997

Present: Mayor Brad Olch (later excused); Council members Hugh Daniels, Roger Harlan; Chuck Klingenstein; Shauna Kerr; and Paul Sincock

Toby Ross, City Manager; Eric DeHaan, City Engineer; Frank Bell, Olympic Services Director; Myles Rademan, Public Affairs Director; Alison Kuhlow, Planner; Mark Harrington, Assistant City Attorney; Jodi Hoffman, City Attorney; Tom Bakaly, Finance Manager; Hope Bleecker, Transportation Director

Terry Menger, Resource Management, Inc.

1. **Council questions and comments.** Roger Harlan reported that the Charles Dickens Friends of the Library's fund-raiser was very successful. Shauna Kerr reported that she attended the Utah League's legislative policy meeting on Monday were the road fund was discussed; this proposed legislation deals with a distribution formula where 1,400 miles would transfer from UDOT to local government and 42 miles of city and county roads would transfer to UDOT. Cities would be provided a greater percentage of funding for four years from 2000 to 2004 for improvements. Eric DeHaan responded that he will review the information. Ms. Kerr referred to a letter to the editor from Bill Molin about the Olympic, suggesting that cities and counties provide a quarterly accounting to the public. She felt it important that staff maintain accurate records about the time spent on Olympics.

Frank Bell, Olympic Planner, felt that the Council and public need more information at this point as Olympic planning is progressing. He reported that security and transportation people, UTA, UDOT, Wasatch Front, Mountainlands and City staff completed a trip to Nagano last week. He expects that some of the costs of the trip will be reimbursed from Justice Department funds. While some money has to be fronted in the short term, he felt that the costs will be reimbursed. Mr. Bell clarified that departmental budgets have not been increased for purposes of the Olympics, and money is being spent out of existing budgeted funds. It is the intent to continue do this, but not forever and staff is formulating a plan for accounting for expenses and time. He pledged to do a better job of reporting back to Council and the media with information. He reported on their trip to Nagano where it is anticipated that there will be huge transportation problems, but the venues are very nice. Mr. Bell introduced Terry Menger, consultant, working on the environmental aspects of the Olympics. Chuck Klingenstein pointed out that along with the expenses, there are benefits that need to be recognized. Frank Bell again discussed reimbursements and road improvements that will be made that are not directly tied to the Olympics, but driven by the event. The Mayor emphasized that people need to realize that the City will have to spend the money to obtain the benefits, and stressed that with more information provided by staff, the Council is able to make better decisions.

The City Manager felt that information formats could be discussed at the upcoming staff retreat. Paul Sincock suggested that it may be helpful to distribute this information to other venue cities

Terry Menger, Resource Management, Inc., explained that he is a non-profit with an office in Denver and Salt Lake City. He stated that he was City Manager of Vail, a developer at Whistler, and spent some time at Sundance. He described a recent project at Pebble Beach and the solution for the resort and environmental groups. Mr. Menger reported that he met with Ski Utah yesterday and there was a lot of interest and support. He met with SLOC and the Forest Service and there are other meetings arranged. His charge is to look at whether there are problems or issues in Park City that the environmental community would identify. He felt that Park City has a good story to tell, but there may be areas that could be improved or things that could cause embarrassment. The other side presents opportunities in terms of legacy. He felt there are opportunities with regard to open space, wetlands, and trails. Mr. Menger added that his firm has been retained by Vail and the Vail Valley Foundation to hold a conference prior to the 1999 World Championships. This will be an international gathering held in the Fall of next year on skiing and the environment. He suggested that case studies from Park City be reviewed and critiqued by the international community and discussed the possibility of the creation of a ski charter with various companies and resorts. Paul Sincock asked for further clarification. Mr. Menger explained the golf charter and its principles that all groups could buy into, which was successful. A skiing charter would address environmental issues like wild life and water. Roger Harlan pointed out the successful environmental image of Lillehammer. Discussion ensured regarding the environmental commitment of SLOC.

Shauna Kerr reported that the police have dramatically increased the issuance of tickets for speeding. She discussed a request for a City shuttle for shopping which was supported by the Council. The Senior Citizen Center is also requesting that the parking lot be expanded for their summer visitors. Staff will check into this. Hugh Daniels discussed the Ten O'Clock Whistle and requested that the entry sign on SR224 be cleaned up. He continued that he met with the new owners of the local television station who are considering taping both City Council and Planning Commission meetings. The Mayor stated that he received a complaint from a resident on Comstock about the lack of enforcement of parking restrictions in the area.

The Mayor recognized Cub Scout Pack 3072 in the audience. The format of the upcoming town meetings was discussed. Myles Rademan added that staff sent notices to the home owners associations of record and there have been PSAs on the radio and papers. He urged Council to get the word out as well; Council agreed that the meetings should be open and informal. Chuck Klingenstein felt that Council's objectives and the status on projects would be helpful. He thanked Jerry Gibbs for the clean-up of graffiti on SR224 and pointed out the graffiti on the Park Meadows Golf Course concrete wall. Mr. Klingenstein attended a meeting with Frank Bell, Eric DeHaan and UDOT about upcoming improvements. He discussed West Valley loaning its citizens old radar guns. Citizens list of the names of speeders and the Police Department sends out notices.

**2. Review of regular meeting:**

**Telecommunications ordinances.** Planner Alison Kuhlow explained that the amendment to the LMC is recommended to help site telecommunication facilities. One part of the ordinance is an administrative review with criteria including compliance with height limitations in the zone and the design needs to be camouflaged. If an application does not comply with those requirements, it will go through a conditional use permit process before the Planning Commission. Chuck Klingenstein asked if there are incentives to encourage providers to consider co-location. Ms. Kuhlow replied that she considered requiring co-location as part of the administrative review, however co-location may result in a higher tower which may not be desirable. As a result, she is not encouraging this approach. Mark Harrington explained that in the franchise ordinance where towers are not involved, providers are encouraged to co-locate. The Mayor discussed the option of cities taking over cable television. Jodi Hoffman added that there is a provision in the TCI franchise agreement that as it expands, it must dedicate a station to Park City. There was discussion about Council determining the cost of the right-of-way and encouraging facilities to be located on City property so there is a revenue stream. The format of the ordinance amendment was discussed.

The Mayor left the meeting at this point in the work session.

**Business license amendments.** Tom Bakaly explained that this amendment is before Council as state law mandates that cities make a more direct connection between the bus system and the business license fees charged. He pointed out the new business license fee schedule in the packet, including ski resort, lodging, restaurant/retail, office/other, and miscellaneous. The Finance Manager discussed the benefit of the bus system to transportation companies where the fee has essentially doubled, however, he has not received complaints about this. He attended the Chamber/Bureau board meeting, and met with the restaurant association regarding this proposal, which is revenue-neutral. Business license notices will go out next week, explaining the new process and there will also be a workshop at the Marsac Building. There is an informal appeals process outlined in the letter, if someone feels he is not categorized accurately. Ms. Kerr stated that the benefits of the bus system seems substantially greater for restaurants, but the rate is not that different for offices. Mr. Bakaly responded that one can argue that restaurants aren't charged enough, but restaurants actually increased about 5% and offices decreased about 23%. The overall approach to the study was category based. Ms. Kerr asked for the basis of the large retail being reduced. The Finance Manager clarified that there is an increase and the City Manager added that the old system categorized the space in a number of categories including retail, storage, or pharmacies, etc. and now it's one rate. There is a warehouse charge under "other" but it will no longer apply to the large retail operator. Jan Scott, City Recorder left the meeting.

**Paid parking program.** A recording error occurred and a portion of a work session tape was recorded over; the following discussions were recorded.

It was explained to Paul Sincock that an Area A permit holder can park anywhere in this area and the monitoring equipment was explained. Frank Normile interjected that it may take him an hour to conduct an appraisal of a property and if he is parked in Old Town, he will be ticketed. The City Manager clarified that the transferrable permit or the guest pass could be provided by his client; Mr. Normile could arrive outside the enforcement hours, or could obtain a guest pass from the City. Chuck Klingenstein stated that this can be addressed but it's not going to be as convenient as it was in the past. Paul Sincock suggested using a Zone 2 hand tag for people who want to park there temporarily. The City Manager expressed his concern that it could prompt parking in residential zones as if it were paid parking. There is a special permit that has been ordered but not assigned a use and those could be made available for certain classes of businesses applying to the City, if Council approved it. Toby Ross explained the four districts in Old Town and the reasoning for differentiating areas. Ms. Kerr relayed that there are employees living in Old Town and working on Main Street who will park on Park Avenue, because they have a permit in the same zone. The City Manager pointed out that Area A is a dense residential area and residents will not be able to do that. This was a concern in designing Area B, however, there was a potential hardship for some people if they were confined to one side for parking. Toby Ross stated that if this continues to remain a problem, staff will look into dividing the zone again, but there isn't a real convenient location. Ms. Kerr suggested that the residences on Park Avenue near Grappa have a different color permit in the same zone and Mr. Ross agreed that this could be implemented. Hugh Daniels agreed that if there is going to be encroachment, it will be on Park Avenue. After discussion, it was decided to make Park Avenue to Heber Avenue a special permit parking area.

Paul Sincock suggested that for real estate and appraisal offices that the guest pass be rotated between workers. Ms. Kerr felt those should be paid for so that they would be responsible for them. She continued that the fee could be just to cover administrative costs. Mr. Ross stated there are three alternatives for lodging in the residential zone. This is basically a free system with permits for employees and paid passes for guests. Option (b) is analogous to the second option in the residential zone which is to charge for extra passes and Option (c) would be eliminating the whole day permit concept. The few changes made, the less confusion there is for people and the less staff has to do to create new systems. There was discussion about issuing hand tags indicating the dates of the guest's visit.

Mr. Ross added that in the commercial lodging area there are two alternatives; one is that there is no special provision but to use the paid parking available including the hand tags and the cards. Discounted cards could be sold to unit owners. The second option is selling day permits to the lodging entities which are priced at the day cost of parking. Staff's recommendation is Option (a). Paul Sincock suggested selling owners an annual pass for $100; Toby Ross pointed out that revenue would be reduced. Additionally, people are encouraged to park overnight at China Bridge because of snow removal efforts. Ms. Kerr didn't feel this is different from other cities where bringing a car incurs parking expenses.

Hope Bleecker explained that staff is proposing some service realignment in daily service which extends between 7 a.m. and 11 p.m. A fixed route and a trolley circulator from 11 p.m. to 3 a.m. has been proposed in response to employee requests. The parking task force looked at extension of the evening City-wide bus, which is a 30 minute service, coming on at 11 p.m. when other service is off route. This involves two buses operating from 11 p.m., extending to 1:10 a.m. The trolley extension will service the park and ride lots to the ski area. The service in 1996-97 was composed of about eight routes, operating 22,000 hours, and carrying 986,072 riders. The new service circulator targeted peak parking demand and carried about 40 riders per hour. Last year, the route to the Silver Mine Adventure and Silver Lake Village was also added and the ridership was approximately eight riders per hour, which was extremely low. At the same time, the ridership from Snow Park Lodge up to Royal Street was extremely high and becoming overloaded.

Ms. Bleecker noted that what is being proposed in the new daily service for 1997-98 is elimination of the Mine Road service. She emphasized that the Silver Mine Adventure and the village at Silver Lake will receive the same service, but in consideration of the safety issues on the Mine Road and low ridership, it is proposed to route the buses up Royal Street. The disadvantage to the Silver Lake merchants is that there is a slightly longer ride time, but it is a much safer ride and adds more service to the total transit market. She explained to Paul Sincock that it is still a one hour frequency, and since the City is extending service outside the City limits, the Silver Mine Adventure would pay for this service.

Ms. Bleecker continued there are buses going past City Park every ten minutes, and the demand for the employee park and ride is going to be very high during the evening hours. Employees will find it difficult to find parking spaces in Zone 3 after 2:30 p.m. She explained that when the Prospector bus comes on line in the evening, it significantly increases opportunities for the park and ride within the existing service as there are 11 buses in one hour. There is the possibility of putting the Prospector all-day express into the mix, but staff is not recommending this at this time, because of duplication of service. Another item in the daily service is the diversion of the trolley route. If the level of service is not satisfactory during peak times, Hope Bleecker discussed the possibility of using two trollies on Main Street at some point in the future. Ms. Bleecker is not suggesting a particular dollar increase but a service realignment of the daily service. The evening service operates between 11 p.m. and 1:10 a.m. which is a productive service which nets about 50 riders per service hour which is comparable to daily service. The highest points of departure are in Prospector Square and also at the Park City Mountain Resort. There is scattered ridership throughout Thaynes Canyon and a high percentage specific to the Radisson Hotel. A change to that would be to add a trolley circulator and the parking committee looked at a couple of other options by putting a trolley into the mix and operate a 20 minute evening frequency. In order to net the highest number of riders, it is proposed to keep the existing City-wide evening service with additional service on Main Street and the Sandridge parking lot. She emphasized that even though there are employees who work late evenings, only two to three people per hour are taking the bus. It is assumed that the majority of employees working late night hours are driving in and the most effective thing for them

[redacted]

PARK CITY
1884

# PARK CITY COUNCIL MEETING
# SUMMIT COUNTY, UTAH
# NOVEMBER 20, 1997

## I ROLL CALL

Mayor Pro Tem Shauna Kerr called the regular meeting of the City Council to order at approximately 6 p.m. at the Marsac Municipal Building on Thursday, November 20, 1997. Members in attendance were Hugh Daniels, Roger Harlan, Shauna Kerr, Chuck Klingenstein, and Paul Sincock. Mayor Brad Olch was excused. Staff present were Toby Ross, City Manager; Mark Harrington, Assistant City Attorney; Alison Kuhlow, Planner; Tom Bakaly, Finance Manager; Hope Bleecker, Transportation Director; Brian Anderson, Parking Operations Manager; and Jodi Hoffman, City Attorney.

## II PUBLIC INPUT

The Mayor Pro Tem invited the public to comment. Frank Normile noted that the Ken Bullock resolution, which was advertised on the agenda published in the *Park Record* this week, does not appear on the agenda tonight. Ms. Kerr advised that when the meeting packets were prepared the resolution was not prepared, but it will be added to business tonight.

Hearing no further comments, the public input session was closed.

## III COMMUNICATIONS FROM COUNCIL AND STAFF

1. Finance Department - Hugh Daniels pointed out that the Finance Department has been working on new software the past couple of weekends, and he thanked them for their extra hours.

2. Resolution congratulating the Park City High School Girls Soccer Team who captured the 3A State Championship - Ms. Kerr read the resolution into the record, and congratulated the team members in attendance.

## IV WORK SESSION NOTES AND MINUTES OF MEETING OF OCTOBER 30, 1997 AND NOVEMBER 6, 1997

Roger Harlan stated that he should be noted as being excused on the November 6 work notes. Hugh Daniels disclosed that he will be abstaining on the October 30 minutes as he was not in attendance. Chuck Klingenstein corrected his disclosure on Pages 1 and 2 of the Minutes of

October 30. Chuck Klingenstein, "I move approval of the Work Session Notes and the Minutes of the Meetings of October 30, 1997 and November 6, 1997, as corrected". Roger Harlan seconded. Motion carried.

| | |
|---|---|
| Hugh Daniels | Aye - 11/6; Abstention - 10/30 |
| Roger Harlan | Aye - 10/30; Abstention -11/6 |
| Shauna Kerr | Aye |
| Chuck Klingenstein | Aye |
| Paul Sincock | Aye |

## V PUBLIC HEARING

1. Ordinance amending Chapter 7 and Chapter 8 of the Land Management Code regarding the regulation of telecommunications facilities - Planner Alison Kuhlow recommended that the Council hold a public hearing on this matter; it appears under New Business for adoption. Ms. Kerr indicated that this was discussed in work session. Hearing no comments or questions, the public hearing was closed.

2. Ordinance amending Title 4, Chapter 10, of the Municipal Code of Park City, Utah adopting a telecommunications right-of-way ordinance - Mark Harrington explained that this ordinance establishes base line criteria and a process for franchises in the City's right-of-way. This ordinance was negotiated by the Utah Municipal Attorneys Association with the industry and the legislature. The Pro Tem opened the hearing and invited the public to comment. Hearing no comments, the public hearing was closed.

3. Ordinance amending Title 4 of the Park City Municipal Code and the Business License Fee Schedule replacing a business license revenue tax with a business license fee - Tom Bakaly stated that this was discussed in work session. This amendment will bring the business license fee process in compliance with state law, which is effective January 1, 1998. The business license fee bears a relationship to the enhanced level of service to businesses which is a free bus system. Mayor Pro Tem Kerr invited the public to comment and opened the public hearing.

Rhonda Sedaris, Chamber/Bureau Board representative, stated that the Board of Directors held its meeting on November 18 where this matter was presented by Mr. Bakaly. Ms. Sedaris stated that the Board passed the motion, "that each business in town has a direct nexus with the transportation system. We urge that the modification not be as broad as proposed. We truly believe that everybody benefits from the bus system in town". Ms. Kerr asked with regard to it not being as broad, is there anything that the Board recommended. Ms. Sedaris stated it did not have an alternative. She continued that on a personal basis, her family uses the bus and everyone benefits from the system. Some businesses are not paying enough and the restaurants and lodges should not pick up the extra burden. Ms. Kerr explained that this is compromise legislation that allowed the

City to use the business license fee to support the bus system. Because of the legislation it has to be appropriated in a way that ties it back to use or the benefit. The City Manager noted that the City has taken a position that everyone benefits from the transportation system, but it is less in some instances than others. Chuck Klingenstein stated that Ms. Sedaris has a good point, but the intent of the original legislation was to eliminate all business license fees and this option was a major compromise.

With no further comments or questions, the public hearing was closed.

## VI CONSENT AGENDA

Hugh Daniels, "I move to remove Item 2 from the Consent Agenda and place it as Item 5 under New Business". Shauna Kerr seconded. Motion unanimously carried. Ms. Kerr requested approval of Item 1. Chuck Klingenstein, "I move approval". Paul Sincock seconded. Motion unanimously carried.

1. Resolution congratulating the Park City High School Girls Soccer Team who captured the 3A State Championship - See Communications from Council and Staff.

2. Resolution recommending Mayor Bradley A. Olch to be appointed to the Salt Lake Olympic Committee Board of Trustees and further recommending Kenneth Bullock to be appointed to the Executive Committee of the Salt Lake Olympic Committee Board of Trustees - See New Business.

## VII NEW BUSINESS

1. Ordinance amending Chapter 7 and Chapter 8 of the Land Management Code regarding the regulation of telecommunications facilities - Chuck Klingenstein, "I move approval of the Ordinance amending Chapter 7 and Chapter 8 of the Land Management Code regarding the regulation of telecommunications facilities". Hugh Daniels seconded. Motion carried unanimously.

2. Ordinance amending Title 4, Chapter 10, of the Municipal Code of Park City, Utah adopting a telecommunications right-of-way ordinance - Chuck Klingenstein, "I move approval of the Ordinance amending Title 4, Chapter 10, of the Municipal Code of Park City, Utah adopting a telecommunications right-of-way ordinance". Hugh Daniels seconded. Motion unanimously carried.

3. Ordinance amending Title 4 of the Park City Municipal Code and the Business License Fee Schedule replacing a business license revenue tax with a business license fee - Paul Sincock stated that during work session, there was a comment that the formula for calculating the ski area business license would be reviewed within a year as it is based on uphill capacity and it may be that skier days are a better method. Deer Valley requested this review, and Mr. Sincock agreed

that it would be appropriate. Ms. Kerr felt it important to review all of the categories as there may be some unintended consequences and before notices are sent out next December, that Council review next fall. Chuck Klingenstein added that this review may be useful in conjunction with new transit information; Roger Harlan suggested scheduling it in early fall. Hugh Daniels believes this meets the law, but the original intent in the early 1980s was to fund 30% to 35% of a free bus system. With the increase in transit tax and a portion of the Resort Cities Sales Tax, the business license subsidy has dropped to about 20%. He emphasized that this fee has not increased in ten years, but is pleased that there is no flat administrative fee and everyone pays something. Hugh Daniels, I move approval of the Ordinance amending Title 4 of the Park City Municipal Code relating to business licensing replacing the business license revenue tax with a business license fee". Paul Sincock seconded. Motion carried unanimously.

4. Consideration of paid parking program and policies in the Historic Core - The Mayor Pro Tem reported that the Transportation Director presented several components of the residential permit system and the transit system in work session, but marketing was not covered. The Mayor Pro Tem asked the public if anyone would like those issues discussed in work session again presented at the regular meeting. Hearing no comments, Hope Bleecker continued her presentation on marketing and introduced Kelly von Stroh of Dunn Communications.

Kelly von Stroh explained that in order to get community relations in place, major stakeholder groups were identified including residents, business owners, employees, and visitors. She described the tokens for the pay and display meters and the quick card system identified with the Park City logo. In response to a question from Paul Sincock, Brian Anderson explained that there isn't a maximum set at this time for the card. Ms. von Stroh added that they presented some marketing ideas to the Parking Task Force and the same theme will be carried through an informational brochure about paid parking with a map of the zones. The brochures will be distributed to visitors through various means. Radio advertising, direct mail cards to locals and business, pay check stuffers for employees, and press releases will be used. She continued that there will be on-site group demonstrations to different stakeholder groups, the Chamber/Bureau will be involved, and Conexion Amigo will reach the Latino community. The media in Salt Lake will also be reporting on the system, and information will be available on web sites. In response to a question from Paul Sincock, Brian Anderson stated that a quick card costs about $.90. Mr. Sincock noted that the quick cards in Aspen were sent to residents with $10 worth of free credit as a public relations effort. Mr. Anderson stated that tokens were considered as a complimentary approach. Roger Harlan felt that the churches may make the brochures available at services. Chuck Klingenstein suggested that electronic signing be considered. Kelly von Stroh added that there is a plan for feedback from users about their experiences with paid parking.

Hope Bleecker stated that marketing of the transit system also needs to occur. Staff recommends giving everyone using a park and ride lot, a parking token valued at $.50. This is simple to do the first year and the reward is immediate. The cost implications are the lowest of the three options and the net cost of minting the tokens and providing information to users is about $6,750. Paul Sincock suggested selling tokens to employers at a discount of 20%. Ms. Bleecker continued that this approach is subsidizing the ride share. The next system involves a merchant voucher system which would require excessive amount of buy-in from the business community throughout Park City. There would be a voucher for everyone departing from a park and ride location and there will be more than employees using the park and ride. This requires some increased staff time to work with the merchant community as the voucher could be redeemed for merchandise. She pointed out that the merchants may receive some free advertising, but there are significant staff costs and this program is almost double the cost of the tokens. The third program is similar to Try Transit Week and would be operated in-house and she suggested that perhaps the person collecting the most vouchers could win a trip to Mexico. Ms. Bleecker felt it necessary to do something to generate interest in the park and ride and reward the best riders. This concept is estimated at $23,500, and based on what Council selects, staff will further investigate an option. Roger Harlan liked the third option, but felt there could be interest generated without giving away prizes. In response to a question from Mr. Harlan, Hope Bleecker explained that the $8,000 for staff time is not the cost of coordinating the merchandizing aspect, but controlling the vouchers which have to be accounted for. Ms. Kerr didn't feel it realistic to implement all three programs and Ms. Bleecker felt that realistically the first and third options could be accomplished. The disadvantage with the last option is that it is not an immediate reward.

The Transportation Director stated that the current fine structure is $10 regardless of the parking violation. Exceeding the time limit is a $15 fine, while blocking a fire station or illegally parking in a handicap stall is a $150 fine. A middle group is parking opposite of traffic or bus stop zones at $25 per violation. Hugh Daniels stated that not allowing parking opposite of traffic is difficult in Old Town where there are narrow steep streets where cars may need to park facing downhill. There was discussion about enforcing this only in the commercial zone and delivery zones. Ms. Bleecker added that violations in delivery zones, bus stops, restricted parking areas, fire hydrants, and double parking would fall in the middle category. Further public education will appear on the back of the ticket with the noticing information. There is a first notice that occurs 30 days after the $15 violation and with a $7 processing fee, the fine goes up to $22, and the second notice to $42 after 60 days have elapsed. At the time of the third notice 90 days have elapsed, the fine is $52, the maximum fine is $62, and at this time 120 days have passed. The same succession would occur for the middle group of violations. Tom Bakaly further explained that after 30 days, a ticket goes to collection where there is a $2 license plate search and a $5 collection fee paid to the independent contractor. There was discussion that the second notice is given 30 days after the first notice, not 60 days after the violation, and Paul Sincock suggested that the process be better clarified on the ticket.

Hope Bleecker discussed the City handling adjudication in-house; the hearing officer could be a contract employee. There was a 30 day appeal deadline which has been extended to 40 days. Brian Anderson displayed samples of the new reflective parking signs. The Mayor Pro Tem invited the public to comment.

Mike Andrews felt that the change in identifying the different levels of offenses is a good idea, but the Council should consider making the parking fine more affordable. People may better abide with the regulations and there may be better turn-over. He suggested that the ticket include an envelope and there be convenient collection boxes. Ms. Kerr appreciated his comments but added that there are problems with repeat offenders on Main Street and a lower fine will encourage merchants and employees to continue to park on Main Street. Ms. Bleecker noted that there are envelopes but no collection boxes and Paul Sincock suggested that the envelope provide prepaid postage. Ms. Kerr did not agree. Mr. Andrews complimented staff on the new noticing process.

Roger Click suggested adequate signage for the park and ride lots. He didn't understand why Council would want to reward riding the bus with tokens for parking downtown. Rather, the reward should be making it easier to ride the bus. He clarified that there should be rewards for people riding the bus and people should pay for parking downtown, but giving away parking tokens doesn't work as an incentive to ride the bus. He urged Council to consider the safety of pedestrians with better lighting.

Tom Hurd, Park Avenue resident, referred to a letter he wrote to Myles Rademan in 1993 about a survey that was conducted on the parking problem. He noted that at the time he suggested that the no parking signs on the east side of Park Avenue between 4th Street and the TMI are universally ignored, and they still are. He and his wife have never seen a car ticketed for a parking violation and felt that the new regulations will be as equally worthless since the current regulations are not enforced. They believe there is a regulation for parked vehicles to be moved every 72 hours and from personal observations, there are vehicles that occupy a space for weeks or months on end. Mr. Hurd asked the difference between a sign indicating "no parking" and one that says "no street parking". He discussed the illegal parking situation on Sundays at St. Mary's. In 1993, Mr. Hurd suggested making Park Avenue one-way downhill and allow parking on both sides of the street. He added that he suggested making Main Street one-way uphill with no parking at all between 2 a.m. and 5 a.m. to allow for snow removal and cleaning. He suggested that the west side be reserved for commercial delivery parking only between 5 a.m. and 10 a.m. with no commercial parking thereafter, although this will never be approved by the Main Street Merchants. Swede Alley could be two-way, but limit parking to four hours and these changes should be effective all year. Mr. Hurd believes that parking on Park Avenue and all westerly streets should be dedicated to locals and bonafide nightly rentals only with decals issued with special permits. Paying for a parking permit by residents of Old Town is okay as long as everybody has to buy a permit to park in front of their house. He continued that parking and congestion have become a problem because it has not adequately been addressed in the past. Changing Park Avenue and Main Street to one-way traffic and enforcement of parking should be done for one year. Although suggested in his letter, Mr. Hurd disagreed with privately contracting for parking services. Mr. Harlan agreed that parking enforcement needs to be consistent. Chuck Klingenstein added that the new parking contract with Ampco contains performance criteria which will be evaluated.

Marion Litner, Park Avenue resident, suggested that the guest parking has essentially gone away and insisted that guests should be able to park in front of the residence or very close. Ms. Kerr felt there would be a problem as it is difficult to predict what spaces will be available. Paul Sincock added that it would lead people to believe that that is their reserved private parking space on a public street which is not accurate. Chuck Klingenstein added that unfortunately it is not possible to guarantee a parking space near her residence, but it is possible to create a zone providing a reasonable distance from her home. The City Manager noted that there is an entry for an address on the permit and it is possible to monitor abuse. Ms. Litner pointed out that snow removal contractors and perhaps the City crews store snow on the lot next to her house, eliminating potential parking. Ms. Kerr believed that some of her concerns could be addressed if the specific Park Avenue permits are available as discussed in work session, to discourage people who have permits from other parts of that zone parking there to work on Main Street. Tom Hurd interjected that that is a great idea but enforcement is the problem.

Rhonda Sedaris, property manager, stated that her problem is that when she plows out her rental properties, adjacent neighbors park in the cleared areas. Ms. Kerr clarified that a permit will not guarantee her those spaces, but hopefully there is a better likelihood of those spaces being available. Ms. Sedaris countered Mr. Hurd's comments about no one receiving tickets as it is her observation that Woodside Avenue is enforced.

With no further comments from the public, the Mayor Pro Tem opened discussion to the Council and suggested beginning with Item 1, the third level of the China Bridge Parking Structure. Chuck Klingenstein felt that it is unrealistic to create a free permit system for employees on the third level and suggested that there be some kind of a fee. The City Manager explained that the parking committee recommended having this free, and the Council further suggested that it be set aside for employees and it probably will fill up quickly. It is believed that it will fill up early with office workers and won't be available to other employees until early evening, but it would be filled with just workers, not employees and tourists if it were a free lot. The downside of charging is that people will have paid for a permit and would expect to find a space. The downside in limiting permits is that there may be surplus of spaces not being used. He emphasized the criteria the Council adopted was making the best use of spaces, and Ms. Bleecker feels that over 150% of the number of spaces is likely to lead to problems, while he feels anything short of 200% will result in empty spaces. Paul Sincock agreed that even if the permit fee is minimal and double the number of permits for spaces, there will be problems and people will complain. Ms. Kerr emphasized that this needs to be marketed that it is not guaranteed parking. Mr. Sincock stressed that it costs \$3.20 for parking eight hours in Zone 2 a day, and felt this is reasonable, and suggested that the third level also be Zone 2. Chuck Klingenstein added the simplicity of making it Zone 2 is appealing, but was undecided. Ms. Kerr suggested $15 to $20 for a monthly parking permit and there was discussion about a seasons pass. The City Manager clarified that staff was not eager to administer monthly passes as it is about a $40 to $60 hour cost.

Ms. Kerr indicated that she supported Option (c), which is a fee to cover costs of a permit program. Hugh Daniels indicated that he supports (c) with 160 permits sold at $20 as this is an experiment that could be monitored. Roger Harlan subscribed to (c) at $25 to $30 a season with 300 permits, and advertised that it is not a guaranteed right. Ms. Kerr asked if this is just for employees or can residents park there. The City Manager clarified that after 8 p.m., anyone can park there. He added that the permit application requires employment information. It was the consensus of Council to set the season rate at $30 and the number of permits at 150 which should be monitored. The City Manager believed that 150 people could park there during a day because of two shifts and seven days of operation. He recommended that staff have the authority to sell more if it seems prudent.

With regard to Item 2 discussed in work session regarding the Old Town residential permit program, Ms. Kerr explained that there will be regular, transferrable, guest permits and daily guest passes. Mr. Sincock stated that he recommended Item (b), limit residential permits and charge for extra permits. There would be two stickers per unit and one guest pass for the dwelling unit at no cost; additional guest passes would cost a fee. He added that daily passes are available at no cost for guests. The Mayor Pro Tem asked Council members their opinion on issuing up to five permits per household. Hugh Daniels stated he is comfortable issuing up to that amount if the application can be researched. Chuck Klingenstein stated he wanted to make sure that staff could monitor this. Roger Harlan felt that five would typically be for a rental unit, and did not get a good feeling about that on Park Avenue. Mr. Daniels clarified that available parking is a mixed bag on Park Avenue. Mr. Harlan felt that administering this may be disproportionate to the value accommodating every request. Mr. Sincock suggested that there could be a charge for over two, and five would be the maximum. Mr. Ross stated that if someone couldn't get a permit, they would have to park in paid parking. Mr. Daniels didn't feel that Old Town residents should be penalized by paying for permits. In response to a question from Chuck Klingenstein, Ms. Bleecker estimated the number of spaces to be between 600 to 700.

Paul Sincock asked if there should be a charge for additional guest passes. Mr. Daniels felt that there should be one pass per dwelling unit and people should be encouraged to use daily passes, if needed. If there seems to be a problem with just issuing one, this can be readdressed. Council supported Option (a) with direction of looking at a special permit for contractors and repairmen.

Ms. Kerr asked for direction on the recommendations for the Old Town lodging permit programs. Mr. Daniels described the mix of lodging in Old Town and leaned toward Option (a), little change from previous years; free residential permits for employees and day passes for their guests. The was discussion about the lack of parking at the Washington School, and Mr. Daniels added that he felt that roughly 60% of guests don't bring cars. Mr. Daniels discussed guest hand-tags being dated so that they could be thrown away and would not be transferrable. Council concurred on Option (a).

The issue of handling guests in the Main Street core, i.e., Silver Queen, Galleria, Park Hotel was then raised. Rhoda Sedaris added that she encourages guests to not bring a car, but some people want to ski other areas. She suggested providing guests with slide cards, although there are problems with guests losing garage door openers. Mr. Harlan felt that most tourists expect to pay for parking and paying $4 a day is not unreasonable. Ms. Sedaris added that when she goes to Aspen and pays for parking, she doesn't mind because she finds a convenient spot to park. She suggested that there be a season pass that the unit owner can purchase. Chuck Klingenstein stated that he agrees with the parking committee as he feels there needs to be a charge, but discounted at 20%. The Council concurred. The City Manager explained that Main Street residents will have free passes for use in Zone 2.

Chuck Klingenstein emphasized that there will be upcoming safety improvements including stairs, lighting and snow removal. Ms. Kerr added that there should be crosswalks by the stairs.

The Mayor Pro Tem moved on to the issue of the public marketing and information program. Mr. Daniels stated that he supported the token program until Mr. Click pointed out that it would reward people with parking instead of encouraging riding the bus. Mr. Sincock disagreed and added that merchants can purchase tokens at a 20% discount to give to customers to offset the cost of the program. Ms. Kerr appreciated Mr. Click's comments but added that this year is a phase-in and this may be enough of an incentive to change an employee's three out of five work shifts, and that is an accomplishment. Roger Harlan suggested that the park and ride employee should be rewarded with a gift or a drawing for skis or dinner somewhere. He felt that the voucher system at $23,000 was too much money. Ms. Bleecker insisted that the reward has to be immediate to be successful. Toby Ross emphasized that it will cost Council at least $15,000 and Ms. Bleecker discussed the $7,000 cost for Try Transit Week last year. Hugh Daniels supported the token system for this season, but suggested moving away from it in time; he could not support the other options. Mr. Click suggested improvements to the bus experience like bus shelters and Council felt this is a good idea. Chuck Klingenstein was not satisfied with the options. Mr. Ross indicated that if Council wants a lower cost, the prizes won't be "bicycles", but something like free Park City cab rides. Mr. Sincock understood the negative message, but felt the tokens should be tried this year. The Council concurred. Hope Bleecker suggested that the City match dollar for dollar what is generated in the fare boxes toward bus shelters.

The Mayor Pro Tem addressed the issue of transit and park and ride strategies. Ms. Bleecker described the shuttle service picking up park and ride people. She discussed running something all day, but there are a significant number of tripper buses at peak times. This is a $34,000 investment and there may be some duplicate service during the peak hours and there are problems with the traffic during the day especially in Prospector. Mr. Daniels asked if the Deer Lake loop would be changed. Ms. Bleecker stated that there is time to extend into a new area, but they are serviced by Deer Valley Resort. Mr. Daniels believed Solamere to be more residential. Ms. Kerr discussed getting employees in the Prospector area to Main Street early in the morning. Ms. Bleecker responded that this is accomplished with the City-wide circulators at 6:50 a.m. Ms. Kerr suggested that the service begin at 5:30 a.m.

Cornelia deBruin complained of having to take her daughter to work early in the morning because it is dangerous to walk in the dark to Main Street. There is a high percentage of people in the same situation working in restaurants with this need. Paul Sincock suggested circulating the City van from midnight to 6 a.m.; this could be on-demand. Roger Harlan believed that the 15 passenger van makes more sense than a bus but Mr. Klingenstein interjected that the cost between the bus and the van was not very much. Ms. Bleecker pointed out that providing a ride to anyone who wants a ride to the parking lot may prompt complaints from the private providers. Paul Sincock suggested a flex system between the hours of midnight and 6 a.m. when the route can be slightly adjusted when there is a request. In the interest of exploring options, Mr. Klingenstein would like to try a fixed system one or two hours earlier. Finance Manager Tom Bakaly added that the $10,000 to extend the hours of service is not in the budget, but because transportation is an enterprise fund, it could be adjusted later. Ms. Bleecker clarified that there would have to be two buses at a cost of $20,000. Hugh Daniels stated that he doesn't want to fund this for 150 days if there is no one on the buses. Paul Sincock suggested that this route also service the park and ride lots. The Council supported the daily Silver Lake and trolley extension. The Transportation Director explained that to run service until 1:10 a.m. plus the trolley until 3 a.m. would cost $17,000 and believed that this service would realize more ridership than the early morning suggestion. Ms. Bleecker felt that the trolley circulator would be more effective in solving the paid parking problems. Council felt that 15 minute service is a good program for employees and Ms. Kerr was pleased to have the Sandridge lot included on the route. In response to a question from Hugh Daniels, Ms. Bleecker indicated that Silver Lake service stops at about 10:40 p.m. The extended morning service would be an experiment and monitored on a monthly basis. Ms. Kerr didn't feel that this route needed to be City-wide as most of the employees are in the Prospector area.

Council supported the parking violation and fine structure with the consideration of allowing parking downhill on Old Town streets. Discussion of signing the lots ensued, specifically park and ride lots, and not encouraging increased traffic on Park Avenue. Mr. Sincock referred to the minutes of October 30, 1997 and the motion supporting staff's recommendation which was providing a 20% discount for locals in Zone 1 and 2. Hope Bleecker stated that she is sorry for not communicating the discount issue more clearly. There is equipment on order that is keyed for no discount in Zone 1. She clarified, however, that tokens and quick cards can be discounted. Hang tags could only be discounted in Zone 2, and after discussion, the Mayor Pro Tem stressed that the order is in and it shouldn't be changed at this point. Chuck Klingenstein and Hugh Daniels recalled that Zone 1 wasn't to be discounted, while the balance of the Council believed both zones to be discounted.

5. Resolution recommending Mayor Bradley A. Olch to be appointed to the Salt Lake Olympic Committee Board of Trustees and further recommending Kenneth Bullock to be appointed to the Executive Committee of the Salt Lake Olympic Committee Board of Trustees - Hugh Daniels pointed out that the City Council had an opportunity to visit with Ken Bullock on October 30 when he was out of town. He continued that he is not sure that he is the right person to recommend to serve on the Executive Committee. He preferred that an elected official from Park City or another venue city be in that position and could not personally support Mr. Bullock. Mr. Sincock questioned if the wording of the resolution made the appointments mutually exclusive. Ms. Kerr stated that she worded the resolution this way at the suggestion made at a previous work session from SLOC member Gordon Strachan. Roger Harlan emphasized that this is only a recommendation and the Governor will ultimately make a decision on both, one or no appointment.

Paul Sincock, "I move approval of the Resolution recommending Mayor Brad Olch to be appointed to the Salt Lake Olympic Committee of Trustees and further recommending that Ken Bullock be appointed to the Executive Committee of the Salt Lake Olympic Committee Board of Trustees". Roger Harlan seconded. Motion carried.

| | |
|---|---|
| Hugh Daniels | Nay |
| Roger Harlan | Aye |
| Shauna Kerr | Aye |
| Chuck Klingenstein | Aye |
| Paul Sincock | Aye |

## VIII ADJOURNMENT

With no further business, the regular meeting of the City Council was adjourned.

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The meeting for which these minutes were prepared was noticed by posting 24 hours in advance and by delivery to the news media two days prior to the meeting.

Prepared by Janet M. Scott

Janet M. Scott

Janet M. Scott, City Recorder

## RESOLUTION CONGRATULATING THE PARK CITY HIGH SCHOOL GIRLS SOCCER TEAM WHO CAPTURED THE 3A STATE CHAMPIONSHIP

WHEREAS, the Park City High School Girls Soccer Team, has had an impressive year and has proved to be a serious and tough contender by being undefeated at 16-0 this season -- a truly extraordinary achievement; and

WHEREAS, the Miners outscored opponents 13-0 in the playoffs and shut out the Ogden Tigers in the Championship Game at Lindquist Field in Ogden on October 25, 1997; and

WHEREAS, it is appropriate to acknowledge the accomplishments and dedication of our fine young athletes as follows:

### 1997 PARK CITY HIGH SCHOOL VARSITY TEAM

| | | |
|---|---|---|
| Jordan Krieger | Lori Barnes | Hallie Wintzer |
| Justine Isleib | Dayna Peay | Brittany Esty |
| Allison Earnshaw | Nicole Hemming | Heidi Kohler |
| Angela Simpson | Missie Wilkinson | Sarah Crook |
| Katherine Matsumoto | Elaine McKay | Jenna Martin |
| Jenni Manwaring | Kim Stevens | Marie Fournier |
| Ryan Tolpinrud | Amanda Smith | Rachel DeLeone |

WHEREAS, it is equally important to recognize the exceptional talent of MVP Jordan Krieger and the leadership skills of Coaches Chip Cook, Andrea Juskaitis and Kurt Krieger;

NOW, THEREFORE, BE IT RESOLVED that the Mayor and City Council are pleased to extend their congratulations to the Coaches and each member of the Miners Soccer Team, as capturing the 3A State Championship is a great honor for our community. This success did not come easily, but is the result of commitment, self-discipline, and team-building -- all fine attributes that spell success in any future endeavors.

PASSED AND ADOPTED this 20th day of November, 1997.

PARK CITY MUNICIPAL CORPORATION

Mayor Bradley A. Olch

Attest:

Janet M. Scott, City Recorder

PARK CITY

1884

# CITY COUNCIL REPORT

**DATE:** November 20, 1997
**DEPARTMENT:** Planning Department
**AUTHOR:** Alison Kuhlow
**TITLE:** Telecommunications Ordinance
**TYPE OF ITEM:** Legislative

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**SUMMARY RECOMMENDATIONS:** Conduct a Public Hearing, consider public input and Staff's recommendation to adopt the attached Ordinance approving regualtions concerning Telecommunication Facilities.

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**DESCRIPTION:**

**A. Topic.**

The intent of this policy is to establish review criteria for the approval of telecommunication siting permits.

**B. Background.**

The Planning Commission held a public hearing on September 24, 1997 and at that meeting directed Staff to draft Findings of Fact and Conclusions of Law for the proposed ordinance. The Planning Commission voted to forward the City Council a positive recommendation on October 22, 1997.

Due to the growth trend of telecommunications and the number of applications anticipated over the next five years, Staff initiated a Telecommunications Ordinance. The growth of the telecommunications industry has been a direct result of the 1996 Federal Telecommunications Act, which is summarized below.

**1996 Federal Telecommunications Act:**

In early 1996 Congress and the President approved the 1996 Federal Telecommunications Act (the "Act"), which opened more portions of the radio spectrum for PCS (Personal Communications Services) licenses. The Act's "immediate objective" is to promote competition among local phone companies, long distance carriers, and cable providers. It is hoped that the long term effects of the Act will be new investment in technology and infrastructure, advanced and affordable telecommunications, universal services to all Americans, and open access to information networks through the creation of a more flexible regulatory environment.

The telecommunication industry has long argued that state and local laws have impeded them from entering many new markets. Congress addressed the "barriers to entry" problem by preempting state and local laws or conditions that prohibit, or have the effect of prohibiting, businesses and individuals from providing telecommunications services in any market. Despite the "deregulation" aspects of the Act, regulations in regard to location telecommunication sites are still retained at a local level.

**Local Control:**
Community concerns have been raised over the potential health and environmental problems that electro-magnetic radiation from service towers and facilities may create. To protect community aesthetics as well as guard public health and safety, local governments have used their zoning powers to regulate towers by requiring setbacks from residential or commercial structures, imposing height restrictions, and requiring safe zones for falling towers or debris from towers. Some local governments have specifically established setback requirements for towers based on health and environmental concerns. Other local governments have issued moratoriums on facility permits in order to develop land use regulations that balance community concerns and the needs of service providers.

While the Act preserves local government powers to regulate the placement, construction, and modification of wireless/cellular telecommunications towers and facilities, it also places a number of restrictions on local governments. The restrictions are as follows:

1. Local zoning requirements may not unreasonably discriminate among wireless providers that compete against one another. This does not mean local officials have to treat them the same if their proposed facilities present different zoning concerns. A proposed 60-foot tower in a residential area presents many different concerns than a 60-foot tower in an industrial area.

2. Local zoning requirements may not prohibit or have the effect of prohibiting wireless service in a community. In other words, a municipality cannot ban wireless telecommunications facilities.

3. A local government must act on a request for permission to place or construct wireless communications facilities within a reasonable period of time. The time to process these applications should not be inordinate, nor is a legislative body required to give them preferential treatment. A zoning request should not be moved up or down the "list". Bottom line: treat all requests with equity and fairness.

4. Any city or planning commission decision denying a request for permission to install or construct wireless facilities must be in writing and must be based on evidence in a written record. An application cannot be rejected based on known or assumed health effects of radio frequency emissions; the FCC will set these standards.

The Land Management Code contains language that regulates essential municipal and public utility uses, facilities and services, but does not specifically regulate wireless towers. Staff has been processing these applications under a Conditional Use Permit, which allowed for the general review needed in siting situations. The proposed Ordinance would outline specific criteria for review of these facilities to ensure proper placement and neighborhood compatibility.

**C. Analysis**
The proposed ordinance is based, in part, on information provided by the American Planning Association and other municipalities. Staff believes that the proposed ordinance represents the Council's and Community's concerns for the health, safety, and welfare of the citizens and guests of Park City. The ordinance addresses the issue of aesthetics and placement in a way that conforms to

the 1996 Telecommunications Act's Guidelines.

Staff has also requested the assistance of local telecommunication companies when drafting the ordinance. The thought behind including these organizations was to receive feedback from the group that will ultimately be using the Code.

Staff has added criteria to the ordinance to allow for the administrative review of these Conditional Use Permit applications where applicable. The Administrative Review will be similar the Outdoor Dining review, which is also a Conditional Use Permit, currently reviewed by Staff. The purpose for the administrative review is to make an easier process for antennae that comply with criteria that would minimize the visual impact on the community.

Staff began researching and preparing this ordinance in April 1997, prior to City Council directive to revise the Land Management Code. Therefore, Staff has not included this proposal as a part of the overall Land Management Code revisions.

**D. Notice.**

Notice of the Planning Commission public hearing was published in the Park Record on September 8, 1997 and the public hearing was held at the Planning Commission on September 24, 1997. There were no comments from the public at that time.

Notice of the City Council public hearing was published in the Park Record on November 15, 1997. There were no comments filed at the time of this report.

**E. Department Review.**

The Community Development Department and City Attorney's Office have reviewed this request. The request was discussed at a Staff Review Meeting on June 17, 1997, where representatives from local utilities and City Staff were in attendance. There were no concerns mentioned at that time. Staff requested additional review by individual telecommunications companies to ensure that the regulations proposed could be reasonably met.

**SIGNIFICANT IMPACTS:**

Telecommunication Facilities Applications will now have specific guidelines and standards for site and facility review. These standards will allow the Community Development Department to ensure compatibility between these new facilities and the neighborhoods in which they are located.

**ALTERNATIVES**

**A.** Approve the proposed Telecommunications Ordinance, as written, and thereby allowing telecommunication applications to be reviewed under specific criteria relating to the type of antennae and zoning district.

**B.** Approve the proposed Telecommunications Ordinance, with modifications, and thereby allowing telecommunication applications to be reviewed under specific criteria relating to the type of antennae and zoning district.

**C.** Deny the proposed Telecommunications Ordinance and retain the current process for approving telecommunication sites, which is as a Conditional Use Permit for essential municipal and public utility uses, facilities and services and buildings. These Conditional Use Permits require Planning

Commission approval.

**D.** Continue the item and request further evaluation from the Staff.

**CONSEQUENCES OF NOT TAKING THE RECOMMENDED ACTION:**
If the Telecommunications Ordinance is not approved, applications for telecommunication facilities will be processed as a Conditional Use Permit requireing Planning Commission approval for all applications. The current Conditional Use regulations do not relate specifically to telecommunications towers.

**RECOMMENDATION:**
The Planning Department requests that the City Council approved the attached ordinance based on the following findings with the following conditions;

**E. FINDINGS OF FACT:**
1. Recent advancements in the technology of telecommunications have made it imperative that Park City Municipal Corporation address the issue of the compatibility of telecommunication facilities with the quality of life of residents; and

2. Many of our citizens rely on these facilities in their daily business, social and family lives, resulting in a burgeoning demand for telecommunication services within Park City; and

3. Park City has the desire to permit cellular and personal wireless towers and facilities; and

4. These regulations are not addressing effect of non-ionizing delectromagnetic radiation; and

5. The City recognizes the need to put in place laws and regulations that effectively balances the aesthetic and safety effects of telecommunication facilities on our landscapes, out citizen's demands for these services and accommodation of the needs of the service providers by enacting the minimum regulations necessary.

**CONCLUSIONS OF LAW:**
1. The proposed ordinance is consistent with the Park City Land Management Code, the General Plan and State and Federal requirements.

**EXHIBITS:**
Exhibit A - Proposed Telecommunication Ordinance
Exhibit B - Interference Agreement

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**Ordinance No. 97-**

## AN ORDINANCE AMENDING CHAPTERS 7 AND 8 OF THE LAND MANAGEMENT CODE OF PARK CITY REGARDING THE REGULATION OF TELECOMMUNICATION FACILITIES IN ALL ZONING DISTRICTS

WHEREAS, recent advancements in the technology of telecommunications have made it imperative that Park City Municipal Corporation address the issue of the compatibility of telecommunication facilities with the quality of life of residents; and

WHEREAS, many of our citizens rely on these facilities in their daily business, social and family lives, resulting in a burgeoning demand for telecommunication services within Park City; and

WHEREAS, Park City has the desire to permit cellular and personal wireless towers and facilities; and

WHEREAS, these regulations are not addressing effect of non-ionizing delectromagnetic radiation; and

WHEREAS, the City recognizes the need to put in place laws and regulations that effectively balances the aesthetic and safety effects of telecommunication facilities on our landscapes, out citizen's demands for these services and accommodation of the needs of the service providers by enacting the minimum regulations necessary; and

WHEREAS, legal notice was duly published and public hearings were held before the Planning Commission on September 24, 1997, and before the City Council on November 20, 1997;

NOW, THEREFORE, BE IT ORDAINED by the City Council of Park City, Utah as follows:

**SECTION 1. AMENDMENT TO CHAPTER 7 OF THE LAND MANAGEMENT CODE.**
The Land Use Tables are hereby amended to include Telecommunication Facilities[1].

REFERENCE NOTES:

[15] These uses are conditional and shall be reviewed under the criteria as stated in Section 8.30 herein.

**SECTION 2. AMENDMENT TO CHAPTER 8 OF THE LAND MANAGEMENT CODE.** Chapter 8 is hereby amended to add a new Section 8.30 which reads as follows:

8.30 TELECOMMUNICATION FACILITIES. The intent of this section is to ensure that telecommunications facilities are compatible with the unique characteristics of each zoning district of Park City, and that adverse impacts on community quality and public health and safety in residential, commercial and industrial areas, are mitigated. The intent of these requirements is to locate such facilities and related equipment where they are least visible from public streets, public areas and designated view corridors and,

[1] Please note that the Land Use Table is attached at the end of this ordinance.

to the best extent possible, provide screening from adjacent property owners. The installation of these devices is governed by the following regulations.

(a) Permit Required. The installation of telecommunication facilities, unless otherwise addressed in this Code, shall be deemed a conditional use and subject to the Park City Building Permit process. It shall be unlawful to install any telecommunication facility without first having a Building Permit from the City. Plans of such facility shall be submitted with each Telecommunications Application.

(b) Definitions.

1. **Antenna.** Transmitting or receiving device used in telecommunications that radiates or captures radio signals.

2. **Co-location.** The location of wireless communication facility on an existing structure, tower or building in a manner that precludes the need for that wireless communications facility to be located on a free-standing structure of its own.

3. **Roof Mounted Antenna.** An Antenna or series of individual Antennas mounted on a roof, mechanical room or penthouse of a building.

4. **Wall Mounted Antenna.** An Antenna or series of individual Antennas mounted against the vertical face of a building or chimney. A wall of face of a building is defined as the entire area of all exposed vertical surfaces of a building that are above ground and facing approximately the same direction.

(c) Submittal Requirements. A complete application shall include the requirements as stated within the Telecommunication Facility Application available in the Community Development Department.

(d) Compliance with other Laws. Such structures shall comply with applicable Federal Aviation Administration and Federal Communications Commission regulations. Evidence of compliance must be submitted prior to the issuance of a Building Permit for tower construction.

(e) Conditional Use Review. The Community Development Department shall review applications administratively pursuant to Sections (f) and (m) below.

1. **Exemption for Towers Located on City Land.** Towers located on City owned land shall pay fair compensations in an amount determined by the City Council. No Planning Commission review shall be necessary but a building permit must be obtained and the criteria in Section (f) or Section 1.13 followed.

(f) Administrative Conditional Use Standards

1. **Freestanding Antennae.**

I) Zoning. Free Standing Towers are prohibited in E, SF, SF-N, RD, RDM, R-1, HR-1, HR-2, HRL, ROS and RM zones.

ii) Height. The proposed height of the facility shall be within the height requirement for the zoning district in which it is placed.

iii) Setbacks. Any part of an Antenna tower shall be setback from the street line or any other lot line of the lot on which it is located a distance of not less than the height of such tower.

iv) Location. Site location and development shall preserve the pre-existing character of the site as much as possible. Existing vegetation shall be preserved or improved, and disturbance of the existing topography of the site shall be minimized, unless such disturbance would result in less visual impact of the site and surrounding area. The effectiveness of visual mitigation shall be evaluated by the Planning Department, taking into consideration the site as built.

v) Fences. Fences in conjunction with a telecommunication site shall be reviewed under the same guidelines as fences constructed within Park City under the Land Management Code. There will be no exceptions to fence materials permitted within the zone. If the application proposes the use of a fence, the Planning Department will require landscaping to mitigate the visual impacts.

vi) Design, Materials and Color. The towers shall be designed in such a manner as to carry gravity loads and resist the effects of earthquakes per the regulations stated in the adopted building code. The towers and associated equipment shall incorporate materials and colors present in the context of the surrounding area. The intent of this provision is to minimize, to the greatest extent possible, the visual contrast between the towers and the existing built and natural environment.

Unless otherwise required by the F.C.C. and the F.A.A., towers shall be light gray in color. The pole, where appropriate, shall be earthtone colors in keeping with the Park City Design Guidelines. Camouflaged towers shall be designed in a manner to blend with the existing built and natural environment.

vii) Lighting. No artificial light shall be installed unless required by the Federal Aviation Administration. If such lighting is required, it shall be partially shielded, unless otherwise required by the FAA. Partially shielded means no more than ten (10) percent of the light rays are emitted by the installed fixtures at angles above the horizontal plane as certified by a photometric test report. These fixtures shall be equipped with high pressure sodium light sources and shall not exceed 70 watts.

2. **Roof or Wall Mounted Antennae.**

I) Zoning. Roof or Wall Mounted Antennae are permitted in all zones subject to the criteria herein.

ii) Height. Antennas or similar structures may extend up to five (5) feet above the specified maximum height limit of the zoning district.

iii) Location. The Antennas shall be located on the structure in areas where such location would provide the least visual impacts from the street and adjacent properties.

iv) Design, Materials and Color. The towers shall be designed in such a manner as to carry gravity loads and resist the effects of earthquakes per the regulations stated in the adopted building code. The Antennas attached to buildings or structures, where appropriate, shall match the color of the structure to which they are attached.

v) Lighting. No artificial light shall be installed unless required by the Federal Aviation Administration. If such lighting is required, it shall be partially shielded, unless otherwise required by the FAA. Partially shielded means no more than ten (10) percent of the light rays are emitted by the installed fixtures at angles above the horizontal plane as certified by a photometric test report. These fixtures shall be equipped with high pressure sodium light sources and shall not exceed 70 watts.

(g) Co-location. To discourage the proliferation of communication towers, shared use of tower structures is both permitted and encouraged. Placement of more than one (1) tower on a land site may be permitted if all setbacks, design and landscape requirements are met for each tower. The application shall include any existing or approved, but unbuilt, communication towers within the transmission area that may meet the needs of the applicant. The supplied documentation shall evaluate the following factors:

1. Structural capacity of the communication towers;
2. Geographic service area requirements;
3. Mechanical or electrical incompatibilities;
4. Inability or ability to locate equipment on existing communication towers; and ,
5. Any restriction or limitation of the Federal Communication Commission that would preclude the shared use of the communication tower.

(h) Accessory Buildings. The Planning Department shall review accessory building applications through the building permit process, along with the details for the construction of the tower. The accessory building shall comply with the guidelines stated in the Land Management Code and the Historic District Design Guidelines where applicable. Outdoor storage of materials is prohibited.

(I) Signs. Signs shall only be permitted if they are related to the health and safety of the general public.

(j) Abandonment. The property owner shall be responsible for the removal of unused communication towers within twelve (12) months of cessation of use. If such tower is not removed by the property owner, then the City may employ all legal measures, including as necessary, obtaining authorization from a court of competent jurisdiction, to remove the tower, and after removal may place a lien on the subject property for all direct and indirect costs incurred in dismantling and disposal of the tower, including court costs and reasonable attorney fees.

(k) Subdivision and Condominium Covenants. Many subdivision and condominium covenants may address the location of telecommunications receiving stations within condominium units and the lots of a subdivision. The City is not a party to those covenants, and no permit from the City shall effect the enforceability of such covenants which might be more restrictive than this ordinance. Applicants for the installation of wireless communication receivers are advised to determine what private land use restrictions apply to their site before applying for the permit from the City. If the proposed installation is within the common area of a condominium or planned unit development, and the application submitted is not in the name of the Home Owner's Association or management committee, the applicant shall provide a letter from the Home Owner's Association or management committee indicating consent to the location of the communication Antenna within the common area has been granted as a part of the permit application filed with the City.

(l) Action. The Community Development Department shall respond, in writing, to a complete application within a reasonable period of time. A denial must be supported by substantial evidence from the written record.

(m) Appeal of the Administrative Conditional Use Denial. If the applicant does not agree with the determination of the Community Development Director, the applicant may request Planning Commission review within ten (10) calendar days of the Community Development Department's decision. All actions of the Planning Commission are appealable to the City Council. Appeals shall be pursuant to Section 1.16 herein.

(n) Technical Necessity Exception. If the application does not meet the criteria as stated in Section (e) the applicant may apply to the Planning Commission for a Technical Necessity Exception. The Planning Commission shall review the application as a Conditional Use Permit pursuant to Section 1.13 herein.

**SECTION 3. FINDINGS OF FACT.**

1. Recent advancements in the technology of telecommunications have made it imperative that Park City Municipal Corporation address the issue of the compatibility of telecommunication facilities with the quality of life of residents; and

2. Many of our citizens rely on these facilities in their daily business, social and family lives, resulting in a burgeoning demand for telecommunication services within Park City; and

3. Park City has the desire to permit cellular and personal wireless towers and facilities; and

4. These regulations are not addressing effect of non-ionizing delectromagnetic radiation; and

5. The City recognizes the need to put in place laws and regulations that effectively balances the aesthetic and safety effects of telecommunication facilities on our landscapes, out citizen's demands for these services and accommodation of the needs of the service providers by enacting the minimum regulations necessary.

**SECTION 4. CONCLUSIONS OF LAW.** The City Council hereby concludes that the proposed amendment is consistent with the Park City Land Management Code, General Plan, and State and Federal requirements.

**SECTION 5. EFFECTIVE DATE.** This Ordinance shall take effect upon publication.
PASSED AND ADOPTED this 20th day of November, 1997 .

PARK CITY MUNICIPAL CORPORATION

______________________________
Bradley A. Olch, Mayor

ATTEST:

______________________________
Jan Scott, City Recorder

APPROVED AS TO FORM:

______________________________
Mark Harrington, Deputy City Attorney

| LAND USE TABLE (Continued) | E | SF | SF-N | RD | RDM | RCO | R-1 | HR-1 | HR-2 | RM | GC | HCB | HRC | RC | LI | ROS | HRL |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Sexually oriented businesses | * | * | * | * | * | * | * | * | * | * | C[4] | * | * | * | * | * | * |
| Free-Standing Telecommunication Antennae | * | * | * | * | * | C[15] | * | * | * | * | C[15] | C[15] | C[15] | C[15] | C[15] | * | * |
| Wall or Roof Telecommunication Antennae | C[15] | C[15] | C[15] | C[15] | C[15] | C[15] | C[15] | C[15] | C[15] | C[15] | C[15] | C[15] | C[15] | C[15] | C[15] | C[15] | C[15] |

**Agreement**

This Agreement is entered into this _____ day of ____________ 199__ by and between (name of company) (hereinafter referred to as the "Petitioner") [by and through its acquisition division (if applicable) and Park City Municipal Corporation.

WHEREAS,it is Park City Municipal Corporation's intent to allow for the adaquate siting of telecommunication towers within the City;

WHEREAS, interference of the approved antenna(e) and associated equipment with the operation, transmission or reception of the Park City Municipal Corporation's emergency (i.e. Fire, EMS, Police, etc.) communication (i.e. radio) frequencies shall be eliminated;

WHEREAS, the Petitioner has agreed that in the event that such interference occurs as a result of the construction or operation of the aforementioned communication antenna(e) or associated equipment, the Petitioner will immediately take all steps necessary to eliminate the interference and prevent any future interference;

WHEREAS, in exchange for the aforementioned warranties and representations, the Community Development Director, and/or the Planning Commission of Park City has approved the Petitioner's application for a Conditional Use Permit to allow the construction of a (height) foot tall (monopole, etc.) tower located (address) in Park City, Utah, upon which will be mounted (3) (cellular, PCS, etc.) communication antenna(e);

NOW, THEREFORE, in consideration of the premises, the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which is expressly acknowledged by both parties, Park City Municipal Corporation and the Petitioner hereby agree as follows:

1. The Petitioner will be allowed to construct a (height) foot tall (monopole, etc.) tower located (address) in Park City, Utah, upon which will be mounted (3) (cellular, PCS, etc.) communication antenna(e);

2. The Petitioner has represented and to warranted Park City Municipal Corporation that the operation of the aforementioned (cellular, PCS, etc.) antenna(e) and associated equipment will not interfere with the operation, transmission or reception of Park City Municipal Corporation's emergency (i.e. Fire, EMS, Police, etc.) communication (i.e. radio) frequencies;

3. In the event that interference with Park City Municipal Corporation's (i.e. Fire, EMS, Police, etc.) communication (i.e. radio) frequencies occurs as a result of the construction or operation of the (cellular, PCS, etc.) communication antenna(e) located on (height) foot tall (monopole, etc.) tower located (address) in Park City, Utah, the Petitioner, as its sole expense, will immediately take all steps necessary to modify or alter its equipment or system to eliminate the interference and prevent any future interference. In the event that sad interference is not able to be eliminated, the Petitioner has agreed to immediately remove from operation those communication antenna(e), equipment, or frequencies which cause said interference, at its sole

expense, in order to eliminate said interference and prevent any future interference;

4. The Petitioner has agreed to indemnify and hold harmless the City, its elected officials, employees, officers, agents, representatives, contractors, and attorneys from and against any and all claims or demands for liability, loss, damage, costs, expenses, or attorney's fees of any kind for actions or omissions of the Petitioner arising out of or in connection with the installation, operation, or maintenance of the aforementioned antenna(e) and equipment, or any other undertaking related to this Agreement;

Dated this ____________ day of _________________________, 199__.

# Agreement

This Agreement is entered into this _____ day of _____________ 199__ by and between (name of company) (hereinafter referred to as the "Petitioner") [by and through its acquisition division (if applicable) and Park City Municipal Corporation.

WHEREAS,it is Park City Municipal Corporation's intent to allow for the adaquate siting of telecommunication towers within the City;

WHEREAS, interference of the approved antenna(e) and associated equipment with the operation, transmission or reception of the Park City Municipal Corporation's emergency (i.e. Fire, EMS, Police, etc.) communication (i.e. radio) frequencies shall be eliminated;

WHEREAS, the Petitioner has agreed that in the event that such interference occurs as a result of the construction or operation of the aforementioned communication antenna(e) or associated equipment, the Petitioner will immediately take all steps necessary to eliminate the interference and prevent any future interference;

WHEREAS, in exchange for the aforementioned warranties and representations, the Community Development Director, and/or the Planning Commission of Park City has approved the Petitioner's application for a permitted Conditional Use Permit to allow the installation of (number) wall mounted (cellular, PCS, etc.) communication antenna(e) on existing (type of wall) walls located on the (location on the building) of the building at (address) in Park City, Utah;

NOW, THEREFORE, in consideration of the premises, the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which is expressly acknowledged by both parties, Park City Municipal Corporation and the Petitioner hereby agree as follows:

1. The Petitioner will be allowed to install (number) wall mounted (cellular, PCS, etc.) communication antenna(e) on existing (type of wall) walls located on the (location on the building) of the building, and to locate the necessary associated equipment (location), at (address) in Park City, Utah;

2. The Petitioner has represented and to warranted Park City Municipal Corporation that the operation of the aforementioned (cellular, PCS, etc.) antenna(e) and associated equipment will not interfere with the operation, transmission or reception of Park City Municipal Corporation's emergency (i.e. Fire, EMS, Police, etc.) communication (i.e. radio) frequencies;

3. In the event that interference with Park City Municipal Corporation's (i.e. Fire, EMS, Police, etc.) communication (i.e. radio) frequencies occurs as a result of the installation or operation of the (cellular, PCS, etc.) communication antenna(e) on existing (type of wall) walls located on the (location on the building) of the building or associated equipment, at (address) in Park City, Utah, the Petitioner, as its sole expense, will immediately take all steps necessary to modify or alter its equipment or system to eliminate the interference and prevent any future interference. In

the event that sad interference is not able to be eliminated, the Petitioner has agreed to immediately remove from operation those communication antenna(e), equipment, or frequencies which cause said interference, at its sole expense, in order to eliminate said interference and prevent any future interference;

4. The Petitioner has agreed to indemnify and hold harmless the City, its elected officials, employees, officers, agents, representatives, contractors, and attorneys from and against any and all claims or demands for liability, loss, damage, costs, expenses, or attorney's fees of any kind for actions or omissions of the Petitioner arising out of or in connection with the installation, operation, or maintenance of the aforementioned antenna(e) and equipment, or any other undertaking related to this Agreement;

PARK CITY
1884

# CITY COUNCIL REPORT

**DATE:** November 17, 1997

**DEPARTMENT:** Legal Department

**AUTHOR:** Mark Harrington, Deputy City Attorney

**TITLE:** Proposed Amendments to the Municipal Code of Park City ("MCPC") enacting a Telecommunication Rights-of-Way Ordinance

**TYPE OF ITEM:** Legislative

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**SUMMARY RECOMMENDATIONS:** Conduct a work session and public hearing on the proposed ordinance and adopt the ordinance as proposed.

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## DESCRIPTION:

### A. Topic.

The Municipal Code of Park City ("MCPC").

### B. Proposal.

Recommended amendments to the MCPC which enact a new Chapter 14 of Title 4 regarding the franchising of telecommunication providers within the City's Rights-of-Way ("ROW").

### C. Background and Analysis.

Several Utah Municipal Attorney Association attorneys and members of the Utah League of Cities and Towns ("ULCT)" have been working with representatives of cities and telecommunication industry regarding a model ordinance for the franchising of telecommunications. The effort was coordinated in response to a movement with the state legislature to preempt local government regarding its right to award franchises for its ROW. The ULCT argued that most of the concerns of the industry and the legislatures could be met if all the cities adopted a relatively uniform ordinance regarding the franchising of telecommunication systems. Legislative leaders agreed to hold off on discussing further legislative action to see if the ULCT could get the cities to adopt such an ordinance. The attached ordinance is the model ordinance drafted as a result of these negotiations, with some minor changes specific to Park City.

The ULCT requests that Cities adopt the ordinance as soon as possible so as to have a complete survey of communities in compliance with the "gentlemen's agreement" prior to the commencement of the state legislative session. The major elements of the ordinance are as follows:

Term- specifies terms will be between 5-15 years.
Agreement- requires a Franchise Agreement for specific award.
Compensation- preserves City's ability to receive "fair and reasonable compensation" for grant, establishes $500 as application fee
Technical Requirements- establishes general construction and technical requirements

## D. Significant Impacts

The proposal is consistent with Park City's approach in negotiating other recent franchise agreements. Flexibility has been retained to address particular providers through the Franchise Agreement and the ordinance specifically retains the Council's future legislative authority. Delay in action could negatively effect the Leagues' lobby effort, and the City could potentially lose all or some of its authority to regulate telecommunication systems within its ROW.

## E. Alternatives

1. **Hold a work session and public hearing on the Ordinance and adopt the Ordinance.** This is the recommended action.

2. **Modify the Ordinance.** If after public input and discussion during the work session, the Council desires further changes, it should direct staff accordingly. Because of the ULCT's work with the industry and legislature, the City does not have a lot of discretion to modify the Ordinance unless it wants to compromise the ULCT's lobby efforts.

3. **Delay Action.** Normally, staff would not ask Council to have a public hearing and action on such a large amendment. However, prompt attention to this matter has been requested by the ULCT. Delay could effect the ULCT's ability to lobby the legislature regarding threatened preemption of the City's authority over telecommunication systems within the City's ROW.

F. **Staff Review**

The Legal, Public Works and Engineering Departments reviewed this matter.

G. **Recommendation**

Conduct a public hearing and work session on the Ordinance and adopt the Ordinance.

Ordinance 97-___

**AN ORDINANCE ENACTING A NEW CHAPTER 14 OF TITLE 4 OF THE MUNICIPAL CODE OF PARK CITY RELATING TO FRANCHISING TELECOMMUNICATIONS WITHIN THE CITY'S RIGHTS-OF-WAY**

WHEREAS, Rights-of-Way are critical to the travel and transport of persons and property in the business and social life of the City;

WHEREAS, Rights-of-Way are intended for public uses and must be managed and controlled consistent with that intent;

WHEREAS, Rights-of-Way can be partially occupied by the facilities of utilities and other public service entities delivering utility and public services rendered for profit, to the enhancement of the health, welfare, and general economic well-being of the City and its citizens;

WHEREAS, Rights-of-Way are a unique and physically limited resource requiring proper management to maximize the efficiency and to minimize the costs to the taxpayers of the foregoing uses and to minimize the inconvenience to and negative effects upon the public from such facilities' construction, placement, relocation, and maintenance in the Rights-of-Way;

WHEREAS, the City should receive fair and reasonable compensation for use of the Rights-of-Way;

WHEREAS, the City finds that while Telecommunications Systems are in part an extension of interstate commerce, their operations also involve Rights-of-Way, municipal franchising, and vital business and community service, which are of local concern;

WHEREAS, the City finds that it is in the best interests of its taxpayers and citizens to promote the rapid development of Telecommunications Services, on a nondiscrimination basis, responsive to community and public interest, and to assure availability for municipal, educational and community services;

WHEREAS, the City finds that it is in the interests of the public to Franchise and to establish standards for franchising Providers in a manner that:

(a) fairly and reasonably compensates the City on a competitively neutral and non-discriminatory basis as provided herein;

(b) encourages competition by establishing terms and conditions under which Providers may use the Rights-of-Way to serve the public;

(c) fully protects the public *interests* and the City from any harm that may flow from such commercial use of Rights-of-Way;

(d) protects the police powers and Rights-of-Way management authority of the City, in a manner consistent with federal and state law;

(e) otherwise protects the public interests in the development and use of the City infrastructure;

(f) protects the public's investment in improvements in the Rights-of-Way; and

(g) ensures that no barriers to entry of Telecommunications Providers are created and that such franchising is accomplished in a manner that does not prohibit or have the effect of prohibiting Telecommunication Services, within the meaning of the Telecommunications Act of 1996 ("Act") [P.L. No. 104-104].

**NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PARK CITY, UTAH THAT:**

**SECTION I. FINDINGS.** The City Council hereby adopts the above recitals as Findings of Fact.

**SECTION II. ENACTMENT.** Chapter 14 of Title 4 of the Municipal Code is hereby enacted pursuant to the City's power to manage the Rights-of-Way, to common law, the Utah Constitution and statutory authority, and pursuant to the City's authority to receive fair and reasonable compensation for the use of Rights-of-Way by Providers as expressly set forth by Section 253 of the Act:

## CHAPTER 14- TELECOMMUNICATIONS AND RIGHTS-OF-WAY

### 4-14-1. SCOPE OF ORDINANCE.

This Ordinance shall provide the basic local scheme for Providers of Telecommunications Services and Systems that require the use of the Rights-of-Way, including Providers of both the System and Service, those Providers of the System only, and those Providers who do not build the System but who only provide Services. This Ordinance shall apply to all future Providers and to all Providers in the City prior to the effective date of this Ordinance, whether operating with or without a Franchise as set forth in Section 4-14-12.2. This Ordinance shall not apply to cable television operators otherwise regulated by a Franchise granted by the City, nor Personal Wireless Service Facilities. Providers excused by other law that prohibits the City from requiring a Franchise shall not be required to obtain a Franchise, but all of the requirements imposed by this Ordinance through the exercise of the City's police power and not preempted by other law shall be applicable.

## 4-14-2. DEFINED TERMS

(A) **APPLICATION** - the process by which a Provider submits a request and indicates a desire to be granted a Franchise to utilize the Rights-of-Way of all, or a part, of the City. An Application includes all written documentation, verbal statements and representations, in whatever form or forum, made by a Provider to the City concerning: the construction of a Telecommunications System over, under, on or through the Rights-of-Way; the Telecommunications Services proposed to be provided in the City by a Provider; and any other matter pertaining to a proposed System or Service.

(B) **CITY**- Park City, Utah.

(C) **COMPLETION DATE** - the date that a Provider begins providing Services to customers in the City.

(D) **CONSTRUCTION COSTS** - all costs of constructing a System, including make ready costs, other than engineering fees, attorneys or accountants fees, or other consulting fees.

(E) **CONTROL OR CONTROLLING INTEREST** - actual working control in whatever manner exercised, including, without limitation, working control through ownership, management, debt instruments or negative control, as the case may be, of the System or of a Provider. A rebuttable presumption of the existence of Control or a Controlling Interest shall arise from the beneficial ownership, directly or indirectly, by any Person, or group of Persons acting in concert, of more than twenty-five percent (25%) of any Provider (which Person or group of Persons is hereinafter referred to as "Controlling Person"). "Control" or "Controlling Interest" as used herein may be held simultaneously by more than one Person or group of Persons.

(F) **FCC** - the Federal Communications Commission, or any successor thereto.

(G) **FRANCHISE** - the rights and obligation extended by the City to a Provider to own, lease, construct, maintain, use or operate a System in the Rights-of-Way within the boundaries of the City. Any such authorization, in whatever form granted, shall not mean or include: (I) any other permit or authorization required for the privilege of transacting and carrying on a business within the City required by the ordinances and laws of the City; (ii) any other permit, agreement or authorization required in connection with operations on Rights-of-Way or public property including, without limitation, permits and agreements for placing devices on or in poles, conduits or other structures, whether owned by the City or a private entity, or for excavating or performing other work in or along the Rights-of-Way.

(H) **FRANCHISE AGREEMENT** - a contract entered into in accordance with the provisions of this Ordinance between the City and a Franchisee that sets forth, subject to this Ordinance, the terms and conditions under which a Franchise will be exercised.

(I) **GROSS REVENUE** - includes all revenues of a Provider that may be included as gross revenue within the meaning of Chapter 26, Title 11 Utah Code annotated, 1953, as amended.

(J) **INFRASTRUCTURE PROVIDER** - a Person providing to another, for the purpose of providing Telecommunication Services to customers, all or part of the necessary System which uses the Rights-Of-Way.

(K) **OPEN VIDEO SERVICE** - any video programming services provided to any Person through the use of Rights-of-Way, by a Provider that is certified by the FCC to operate an Open Video System pursuant to sections 651, *et seq.*, of the Telecommunications Act (to be codified at 47 U.S.C. Title VI, Part V), regardless of the System used.

(L) **OPEN VIDEO SYSTEM** - the system of cables, wires, lines, towers, wave guides, optic fiber, microwave, laser beams, and any associated converters, equipment, or facilities designed and constructed for the purpose of producing, receiving, amplifying or distributing Open Video Services to or from subscribers or locations within the City.

(M) **OPERATOR** - any Person who provides Service over a Telecommunications System and directly or through one or more Persons owns a Controlling Interest in such System, or who otherwise controls or is responsible for the operation of such a System.

(N) **ORDINANCE** or **TELECOMMUNICATIONS ORDINANCE** - this Telecommunications Ordinance concerning the granting of Franchises in and by the City for the construction, ownership, operation, use or maintenance of a Telecommunications System.

(O) **PERSON** - includes any individual, corporation, partnership, association, joint stock company, trust, or any other legal entity, but not the City.

(P) **PERSONAL WIRELESS SERVICES FACILITIES** - has the same meaning as provided in Section 704 of the Act (47 U.S.C. 332(c)(7)(c)), which includes what is commonly known as cellular and PCS Services that do not install any System or portion of a System in the Rights-of-Way.

(Q) **PROVIDER** - an Operator, Infrastructure Provider, Resaler, or System Lessee.

(R) **PSC** - the Public Service Commission, or any successor thereto.

(S) **RESALER** - any Person that provides local exchange service over a System for which a separate charge is made, where that Person does not own or lease the underlying System used for the transmission.

(T) **RIGHTS-OF-WAY** - the surface of and the space above and below any public street, sidewalk, alley, or other public way of any type whatsoever, now or hereafter existing, and owned by or otherwise dedicated to the City.

(U) **SIGNAL** - any transmission or reception of electronic, electrical, light or laser or radio frequency energy or optical information in either analog or digital format.

(V) **SYSTEM OR TELECOMMUNICATIONS SYSTEM** - all conduits, manholes, poles, antennas, transceivers, amplifiers and all other electronic devices, equipment, Wire and appurtenances owned, leased, or used by a Provider, located in the Rights-of-Way and utilized in the provision of Services, including fully digital or analog, voice, data and video imaging and other enhanced Telecommunications Services. Telecommunications System or Systems also includes an Open Video System.

(W) **SYSTEM LESSEE** - any Person that leases a System or a specific portion of a System to provide Services.

(X) **TELECOMMUNICATIONS** - the transmission, between or among points specified by the user, of information of the user's choosing (*e.g.*, data, video, and voice), without change in the form or content of the information sent and received.

(Y) **TELECOMMUNICATIONS SERVICES OR SERVICES** - any telecommunications services provided by a Provider within the City that the Provider is authorized to provide under federal, state and local law, and any equipment and/or facilities required for and integrated with the Services provided within the City, except that these terms do not include "cable service" as defined in the Cable Communications Policy Act of 1984, as amended by the Cable Television Consumer Protection and Competition Act of 1992 (47 U.S.C.§ 521, *et seq.*), and the Telecommunications Act of 1996. Telecommunications System or Systems also includes an Open Video System.

(Z) **WIRE** - fiber optic Telecommunications cable, wire, coaxial cable, or other transmission medium that may be used in lieu thereof for similar purposes.

## 4-14-3. FRANCHISE REQUIRED

4-14-3.1 Non-Exclusive Franchise. The City is empowered and authorized to issue non-exclusive Franchises governing the installation, construction, and maintenance of Systems in the City's Rights-of-Way, in accordance with the provisions of this Ordinance. The Franchise is granted through a Franchise Agreement entered into between the City and Provider.

4-14-3.2 Every Provider Must Obtain. Except to the extent preempted by federal or state law, as ultimately interpreted by a court of competent jurisdiction, including any appeals, every Provider must obtain a Franchise prior to constructing a Telecommunications System or providing Telecommunications Services using the Rights-of-Way, and every Provider must obtain a Franchise before constructing an Open Video System or providing Open Video Services via an Open Video System. Any Open Video System or Service shall be subject to the customer service and consumer protection provisions applicable to the Cable TV companies to the extent the City is not preempted or permitted as ultimately interpreted by a court of competent jurisdiction, including any appeals. The fact that particular Telecommunications Systems may be used for multiple purposes does not obviate the need to obtain a Franchise for other purposes. By way of illustration and not limitation, a cable operator of a cable system must obtain a cable franchise, and, should it intend to provide Telecommunications Services over the same System, must also obtain a Telecommunications Franchise.

4-14-3.3 Nature of Grant. A Franchise shall not convey title, equitable or legal, in the Rights-of-Way. A Franchise is only the right to occupy Rights-of-Way on a non-exclusive basis for the limited purposes and for the limited period stated in the Franchise; the right may not be subdivided, assigned, or subleased. A Franchise does not excuse a Provider from obtaining appropriate access or pole attachment agreements before collocating its System on the property of others, including the City's property. The Franchise Agreement may impose additional limitations upon the Provider, such as location of utilities. This section shall not be construed to prohibit a Provider from leasing conduit to another Provider, so long as the Lessee has obtained a Franchise from the City.

4-14-3.4 Current Providers. Except to the extent exempted by federal or state law, any Provider acting without a Franchise on the effective date of this Ordinance shall request issuance of a Franchise from the City within 90 days of the effective date of this Ordinance. If such request is made, the Provider may continue providing service during the course of negotiations. If a timely request is not made, or if negotiations cease and a Franchise is not granted, the Provider shall comply with the provisions of Section 4-14- 9.4.

4-14-3.5 Nature of Franchise. The Franchise granted by the City under the provisions of this Ordinance shall be a nonexclusive Franchise providing the right and consent to install, repair, maintain, remove and replace its System on, over and under the Rights-of-Way in order to provide Services, unless otherwise specified by the Franchise Agreement.

4-14-3.6 Regulatory Approval Needed. Before offering or providing any Services pursuant to the Franchise, a Provider shall obtain any and all regulatory approvals, permits, authorizations or licenses for the offering or provision of such Services from the appropriate federal, state and local authorities, if required, and shall submit to the City upon the written request of the City evidence of all such approvals, permits, authorizations or licenses.

4-14-3.7 Term. No Franchise issued pursuant to this Ordinance shall have a term of less than five (5) years or greater than fifteen (15) years. Each Franchise shall be granted in a nondiscriminatory manner.

## 4-14-4. COMPENSATION AND OTHER PAYMENTS

4-14-4.1 Compensation. As fair and reasonable compensation for any Franchise granted pursuant to this Ordinance, a Provider shall have the following obligations:

4-14-4.1.1 Application Fee. In order to offset the cost to the City to review an Application for a Franchise and in addition to all other fees, permits or charges, a Provider shall pay to the City, at the time of Application, $500 as a non-refundable Application fee.

4-14-4.1.2 Franchise Fees. The Franchise fee, if any, shall be set forth in the Franchise Agreement. The obligation to pay a Franchise fee shall commence on the Completion Date. The combination of the Franchise Fee and any other business license fee or franchise license fee enacted by the City shall not in total exceed the state limitation on franchise fees (currently 6% of gross revenue), as amended.

4-14-4.1 Excavation Permits. The Provider shall also pay fees required for an excavation permit as provided in the City's Fee Resolution or applicable code.

4-14-4.2 Timing. Unless otherwise agreed to in the Franchise Agreement, all Franchise Fees shall be paid on a monthly basis within forty-five (45) days of the close of each calendar month.

4-14-4.3 Fee Statement and Certification. Unless a Franchise Agreement provides otherwise, each fee payment shall be accompanied by a statement showing the manner in which the fee was calculated and shall be certified as to its accuracy.

4-14-4.4 Future Costs. A Provider shall pay to the City or to third parties, at the direction of the City, an amount equal to the reasonable costs and reasonable expenses that the City incurs for the services of third parties (including but not limited to attorneys and other consultants) in connection with any renewal or Provider-initiated renegotiation, or amendment of this Ordinance or a Franchise, provided, however, that the parties shall agree upon a reasonable financial cap at the outset of negotiations. In the event the parties are unable to agree, either party may submit the issue to binding arbitration in accordance with the rules and procedures of the American Arbitration Association.

4-14-4.5 Taxes and Assessments. To the extent taxes or other assessments are imposed by taxing authorities, other than the City on the use of the City property as a result of a Provider's use or occupation of the Rights-of-Way, the Provider shall be responsible for payment of its pro rata share of such taxes, payable annually unless otherwise required by the taxing authority. Such payments shall be in addition to any other fees payable pursuant to this Ordinance.

4-14-4.6 Interest on Late Payments. In the event that any payment is not actually received by the City on or before the applicable date fixed in the Franchise, interest thereon shall accrue from such date until received at the rate charged for delinquent state taxes.

4-14-4.7 No Accord and Satisfaction. No acceptance by the City of any fee shall be construed as an accord that the amount paid is in fact the correct amount, nor shall such acceptance of such fee payment be construed as a release of any claim the City may have for additional sums payable.

4-14-4.8 Not in Lieu of Other Taxes or Fees. The fee payment is not a payment in lieu of any tax, fee or other assessment except as specifically provided in this Ordinance, or as required by applicable law. By way of example, and not limitation, excavation permit fees and fees to obtain space on the City owned or leased poles are not waived and remain applicable.

4-14-4.9 Continuing Obligation and Holdover. In the event a Provider continues to operate all or any part of the System after the Term of the Franchise, such operator shall continue to comply with all applicable provisions of this Ordinance and the Franchise, including, without limitation, all compensation and other payment provisions throughout the period of such continued operation, provided that any such continued operation shall in no way be construed as a renewal or other extension of the Franchise, nor as a limitation on the remedies, if any, available to the City as a result of such continued operation after the term, including, but not limited to, damages and restitution.

4-14-4.10 Costs of Publication. A Provider shall assume any publication costs associated with its Franchise that may be required by law.

## 4-14- 5. FRANCHISE APPLICATIONS

4-14-5.1 Franchise Application. To obtain a Franchise to construct, own, maintain or provide Services through any System within the City, to obtain a renewal of a Franchise granted pursuant to this Ordinance, or to obtain the City approval of a transfer of a Franchise, as provided in Subsection 4-14-7.1.2, granted pursuant to this Ordinance, an Application must be filed with City. The Application form may be changed by the City Manager so long as such changes request information that is consistent with this Ordinance.

4-14-5.2 Application Criteria. In making a determination as to an Application filed pursuant to this Ordinance, the City may, but shall not be limited to, request the following from the Provider:

(a) A copy of the order from the PSC granting a Certificate of Convenience and Necessity.

(b) Certification of the Provider's financial ability to compensate the City for Provider's intrusion, maintenance and use of the Rights-of-Way during the Franchise term proposed by the Provider;

(c) Provider′ s agreement to comply with the requirements of Section 4-14-6 of this Ordinance.

4-14-5.3 Franchise Determination. The City, in its discretion, shall determine the award of any Franchise on the basis of these and other considerations relevant to the use of the Rights-of-Way, without competitive bidding.

## 4-14- 6. CONSTRUCTION AND TECHNICAL REQUIREMENTS

4-14-6.1 General Requirement. No Provider shall receive a Franchise unless it agrees to comply with each of the terms set forth in this Section governing construction and technical requirements for its System, in addition to any other reasonable requirements or procedures specified by the City or the Franchise, including requirements regarding locating and sharing in the cost of locating portions of the System with other Systems or with City utilities. A Provider shall obtain an excavation permit before commencing any work in the Rights-of-Way.

4-14-6.2 Quality. All work involved in the construction, maintenance, repair, upgrade and removal of the System shall be performed in a safe, thorough and reliable manner using materials of good and durable quality, and in accordance with the City's Design Standards, Construction Specifications, and Standard Drawings (latest edition). If, at any time, it is determined by the FCC or any other agency granted authority by federal law or the FCC to make such determination, that any part of the System, including, without limitation, any means used to distribute Signals over or within the System, is harmful to the public health, safety or welfare, or quality of service or reliability, then a Provider shall, at its own cost and expense, promptly correct all such conditions.

4-14-6.3 Licenses and Permits. A Provider shall have the sole responsibility for diligently obtaining, at its own cost and expense, all permits, licenses or other forms of approval or authorization necessary to construct, maintain, upgrade or repair the System, including but not limited to any necessary approvals from Persons and/or the City to use private property, easements, poles and conduits. A Provider shall obtain any required permit, license, approval or authorization, including but not limited to excavation permits, pole attachment agreements, etc., prior to the commencement of the activity for which the permit, license, approval or authorization is required.

4-14-6.4 Relocation of the System.

4-14-6.4.1 New Grades or Lines. If the grades or lines of any Rights-of-Way are changed at any time in a manner affecting the System, then a Provider shall comply with the requirements of the excavation ordinance or other applicable City regulation.

4-14-6.4.2 The City Authority to Move System in case of an Emergency. The City may, at any time, in case of fire, disaster or other emergency, as determined by the City in its reasonable discretion, cut or move any parts of the System and appurtenances on, over or under the Rights-of-Way of the City, in which event the City shall not be liable therefor to a Provider. The City shall notify a Provider in writing prior to, if practicable, but in any event as soon as possible and in no case later than the next business day following any action taken under this Section. Notice shall be given as provided in Section 11.4.

4-14-6.4.3 A Provider Required to Temporarily Move System for Third Party. A Provider shall, upon prior reasonable written notice by the City or any Person holding a permit to move any structure, and within the time that is reasonable under the circumstances, temporarily move any part of its System to permit the moving of said structure. A Provider may impose a reasonable charge on any Person other than the City for any such movement of its Systems.

4-14-6.4.4 Rights-of-Way Change - Obligation to Move System. When the City is changing a Rights-of-Way and makes a written request, a Provider is required to move or remove its System from the Rights-of-Way, without cost to the City, to the extent provided in the excavation ordinance. This obligation does not apply to Systems originally located on private property pursuant to a private easement, which property was later incorporated into the Rights-of-Way, if that private easement grants a superior vested right. This obligation exists whether or not the Provider has obtained an excavation permit.

4-14-6.5 Protect Structures. In connection with the construction, maintenance, repair, upgrade or removal of the System, a Provider shall, at its own cost and expense, protect any and all existing structures belonging to the City and any historically significant structure or building, as designated by the Historic District Commission. A Provider shall obtain the prior written consent of the City to alter any water main, power facility, sewerage or drainage system, or any other municipal structure on, over or under the Rights-of-Way of the City required because of the presence of the System. Any such alteration shall be made by the City or its designee on a reimbursable basis. A Provider agrees that it shall be liable for the costs incurred by the City to replace or repair and restore to its prior condition in a manner as may be reasonably specified by the City, any municipal structure or any other Rights-of-Way of the City involved in the construction, maintenance, repair, upgrade or removal of the System that may become disturbed or damaged as a result of any work thereon by or on behalf of a Provider pursuant to the Franchise.

4-14-6.6 No Obstruction. In connection with the construction, maintenance, upgrade, repair or removal of the System, a Provider shall not unreasonably obstruct the Rights-of-Way of fixed guide way systems, railways, passenger travel, or other traffic to, from or within the City without the prior consent of the appropriate authorities.

4-14-6.7 Safety Precautions. A Provider shall, at its own cost and expense, undertake all necessary and appropriate efforts to prevent accidents at its work sites, including the placing and maintenance of proper guards, fences, barricades, security personnel and suitable and sufficient lighting, and such other requirements prescribed by OSHA and Utah OSHA. A Provider shall comply with all applicable federal, state and local requirements including but not limited to the National Electric Safety Code.

4-14-6.8 Repair. After written reasonable notice to the Provider, unless, in the sole determination of the City, an imminent danger exists, any Rights-of-Way within the City which are disturbed or damaged during the construction, maintenance or reconstruction by a Provider of its System may be repaired by the City at the Provider's expense, to a condition as good as that prevailing before such work was commenced. Upon doing so, the City shall submit to such a Provider an itemized statement of the cost for repairing and restoring the Rights-of-Ways intruded upon. The Provider shall, within thirty (30) days after receipt of the statement, pay to the City the entire amount thereof.

4-14-6.9 System Maintenance. A Provider shall:

(a) Install and maintain all parts of its System in a non-dangerous condition throughout the entire period of its Franchise.

(b) Install and maintain its System in accordance with standard prudent engineering practices and shall conform, when applicable, with the National Electrical Safety Code and all applicable other federal, state and local laws or regulations.

(c) At all reasonable times, permit examination by any duly authorized representative of the City of the System and its effect on the Rights-of-Way.

4-14-6.10 Trimming of Trees. A Provider shall have the authority to trim trees, in accordance with all applicable utility restrictions, ordinance and easement restrictions, upon and hanging over Rights-of-Way so as to prevent the branches of such trees from coming in contact with its System. (See Title 14)

## 4-14- 7. FRANCHISE AND LICENSE NON-TRANSFERRABLE

4-14-7.1 Notification of Sale.

4-14-7.1.1 Notification and Election. When a Provider is the subject of a sale, transfer, lease, assignment, sublease or disposed of, in whole or in part, either by forced or involuntary sale, or by ordinary sale, consolidation or otherwise, such that it or its successor entity is obligated to inform or seek the approval of the PSC, the Provider or its successor entity shall promptly notify the City of the nature of the transaction. The notification shall include either:

(a) the successor entity's certification that the successor entity unequivocally agrees to all of the terms of the original Provider's Franchise Agreement, or

(b) the successor entity's Application in compliance with Section 4-14-5 of this Ordinance.

4-14-7.1.2 Transfer of Franchise. Upon receipt of a notification and certification in accordance with Subsection 4-14-7.1.1(a), the City designee, as provided in Subsection 4-14-9.1.1, shall send notice affirming the transfer of the Franchise to the successor entity. If the City has good cause to believe that the successor entity may not comply with this Ordinance or the Franchise Agreement, it may require an Application for the transfer. The Application shall comply with Section 4-14-5.

4-14-7.1.3 If PSC Approval No Longer Required. If the PSC no longer exists, or if its regulations or state law no longer require approval of transactions described in Section 4-14-7.1, and the City has good cause to believe that the successor entity may not comply with this Ordinance or the Franchise Agreement, it may require an Application. The Application shall comply with Section 4-14-5.

4-14-7.2 Events of Sale. he following events shall be deemed to be a sale, assignment or other transfer of the Franchise requiring compliance with subsection 7.1: (I) the sale, assignment or other transfer of all or a majority of a Provider's assets to another Person; (ii) the sale, assignment or other transfer of capital stock or partnership, membership or other equity interests in a Provider by one or more of its existing shareholders, partners, members or other equity owners so as to create a new Controlling Interest in a Provider; (iii) the issuance of additional capital stock or partnership, membership or other equity interest by a Provider so as to create a new Controlling Interest in such a Provider; or (iv) the entry by a Provider into an agreement with respect to the management or operation of such Provider or its System.

## 4-14- 8. OVERSIGHT AND REGULATION

4-14-8.1 Insurance, Indemnity, and Security. Prior to the execution of a Franchise, a Provider will deposit with the City an irrevocable, unconditional letter of credit as required by the terms of the Franchise, and shall obtain and provide proof of the insurance coverage required by the Franchise. A Provider shall also indemnify the City as set forth in the Franchise.

4-14-8.2 Oversight. The City shall have the right to oversee, regulate and inspect periodically the construction, maintenance, and upgrade of the System, and any part thereof, in accordance with the provisions of the Franchise and applicable law. A Provider shall establish and maintain managerial and operational records, standards, procedures and controls to enable a Provider to prove, in reasonable detail, to the satisfaction of the City at all times throughout the Term, that a Provider is in compliance with the Franchise. A Provider shall retain such records for not less than the applicable statute of limitations.

4-14-8.3 Maintain Records. A Provider shall at all times maintain:

(a) On file with the City, a full and complete set of plans, records and "as-built" hard copy maps and, to the extent the maps are placed in an electronic format, they shall be made in electronic format compatible with the City's existing GIS system, of all existing and proposed installations and the types of equipment and Systems installed or constructed in the Rights-of-Way, properly identified and described as to the types of equipment and facility by appropriate symbols and marks which shall include annotations of all Rights-of-Ways where work will be undertaken. As used herein, "as-built" maps includes file construction prints. Maps shall be drawn to scale. "As-built" maps, including the compatible electronic format, as provided above, shall be submitted within 30 days of completion of work or within 30 days after completion of modification and repairs. "As- built" maps are not required of the Provider who is the incumbent local exchange carrier for the existing System to the extent they do not exist.

(b) Throughout the term of the Franchise, a Provider shall maintain complete and accurate books of account and records of the business, ownership, and operations of a Provider with respect to the System in a manner that allows the City at all times to determine whether a Provider is in compliance with the Franchise. Should the City reasonably determine that the records are not being maintained in such a manner, a Provider shall alter the manner in which the books and/or records are maintained so that a Provider comes into compliance with this Section. All financial books and records which are maintained in accordance with the regulations of the FCC and any governmental entity that regulates utilities in the State of Utah, and generally accepted accounting principles shall be deemed to be acceptable under this Section.

4-14-8.4 Confidentiality. If the information required to be submitted is proprietary in nature or must be kept confidential by federal, state or local law, upon proper request by a Provider, such information shall be classified as a Protected Record within the meaning of the Utah Government Records Access and Management Act ("GRAMA"), making it available only to those who must have access to perform their duties on behalf of the City, provided that a Provider notifies the City of, and clearly labels the information which a Provider deems to be confidential, proprietary information. Such notification and labeling shall be the sole responsibility of the Provider.

4-14-8.5 Provider's Expense. All reports and records required under this Ordinance shall be furnished at the sole expense of a Provider, except as otherwise provided in this Ordinance or a

Franchise.

4-14-8.6 Right of Inspection. For the purpose of verifying the correct amount of the franchise fee, the books and records of the Provider pertaining thereto shall be open to inspection or audit by duly authorized representatives of the City at all reasonable times, upon giving reasonable notice of the intention to inspect or audit the books and records, provided that the City shall not audit the books and records of the Provider more often than annually. The Provider agrees to reimburse the City the reasonable costs of an audit if the audit discloses that the Provider has paid ninety-five percent (95%) or less of the compensation due the City for the period of such audit. In the event the accounting rendered to the City by the Provider herein is found to be incorrect, then payment shall be made on the corrected amount within thirty (30) calendar days of written notice, it being agreed that the City may accept any amount offered by the Provider, but the acceptance thereof by the City shall not be deemed a settlement of such item if the amount is in dispute or is later found to be incorrect.

## 4-14- 9. RIGHTS OF CITY

4-14-9.1 Enforcement and Remedies.

4-14-9.1.1 Enforcement - City Designee. The City is responsible for enforcing and administering this Ordinance, and the City or its designee, as appointed by the City Manager, is authorized to give any notice required by law or under any Franchise Agreement.

4-14-9.1.2 Enforcement Provision. Any Franchise granted pursuant to this Ordinance shall contain appropriate provisions for enforcement, compensation, and protection of the public, consistent with the other provisions of this Ordinance, including, but not limited to, defining events of default, procedures for accessing the Bond/Security Fund, and rights of termination or revocation.

4-14-9.2 Force Majeure. In the event a Provider's performance of any of the terms, conditions or obligations required by this Ordinance or a Franchise is prevented by a cause or event not within a Provider's control, such inability to perform shall be deemed excused and no penalties or sanctions shall be imposed as a result thereof. For the purpose of this section, causes or events not within the control of a Provider shall include, without limitation, acts of God, strikes, sabotage, riots or civil disturbances, failure or loss of utilities, explosions, acts of public enemies, and natural disasters such as floods, earthquakes, landslides, and fires.

4-14-9.3 Extended Operation and Continuity of Services.

4-14-9.3.1 Continuation After Expiration. Upon either expiration or revocation of a Franchise granted pursuant to this Ordinance, the City shall have discretion to permit a Provider to continue to operate its System or provide Services for an extended period of time not to exceed six (6) months from the date of such expiration or revocation. A Provider shall continue to operate its System under the terms and conditions of this Ordinance and the Franchise granted pursuant to this Ordinance.

4-14-9.3.2 Continuation by Incumbent Local Exchange Carrier. If the Provider is the incumbent local exchange carrier, it shall be permitted to continue to operate its System and provide Services without regard to revocation or expiration, but shall be obligated to negotiate a renewal in good faith.

4-14-9.4 Removal or Abandonment of Franchise Property.

4-14-9.4.1 Abandoned System. In the event that (1) the use of any portion of the System is discontinued for a continuous period of twelve (12) months, and thirty (30) days after no response to written notice from the City to the last known address of Provider; (2) any System has been installed in the Rights-of-Way without complying with the requirements of this Ordinance or Franchise; or (3) the provisions of Section 3.5 are applicable and no Franchise is granted, a Provider, except the Provider who is an incumbent local exchange carrier, shall be deemed to have abandoned such System.

4-14-9.4.2 Removal of Abandoned System. The City, upon such terms as it may impose, may give a Provider written permission to abandon, without removing, any System, or portion thereof, directly constructed, operated or maintained under a Franchise. Unless such permission is granted or unless otherwise provided in this Ordinance, a Provider shall remove within a reasonable time the abandoned System and shall restore, using prudent construction standards, any affected Rights-of-Way to their former state at the time such System was installed, so as not to impair their usefulness. In removing its plant, structures and equipment, a Provider shall refill, at its own expense, any excavation necessarily made by it and shall leave all Rights-of-Way in as good condition as that prevailing prior to such removal without materially interfering with any electrical or telephone cable or other utility wires, poles or attachments. The City shall have the right to inspect and approve the condition of the Rights-of-Way cables, wires, attachments and poles prior to and after removal. The liability, indemnity and insurance provisions of this Ordinance and any security fund provided in a Franchise shall continue in full force and effect during the period of removal and until full compliance by a Provider with the terms and conditions of this Section.

4-14-9.4.3 Transfer of Abandoned System to City. Upon abandonment of any System in place, a Provider, if required by the City, shall submit to the City a written instrument, satisfactory in form to the City, transferring to the City the ownership of the abandoned System.

4-14-9.4.4 Removal of Above-Ground System. At the expiration of the term for which a Franchise is granted, or upon its revocation or earlier expiration, as provided for by this Ordinance, in any such case without renewal, extension or transfer, the City shall have the right to require a Provider to remove, at its expense, all above-ground portions of a System from the Rights-of-Way within a reasonable period of time, which shall not be less than one hundred eighty (180) days. If the Provider is the incumbent local exchange carrier, it shall not be required to remove its System, but shall negotiate a renewal in good faith, unless otherwise provided for in the Franchise Agreement.

4-14-9.4.5 Leaving Underground System. Notwithstanding anything to the contrary set forth in this Ordinance, a Provider may abandon any underground System in place so long as it does not materially interfere with the use of the Rights-of-Way or with the use thereof by any public utility, cable operator or other Person, unless otherwise provided for in the Franchise Agreement.

## 4-14-10. OBLIGATION TO NOTIFY

4-14-10.1 Publicizing Work. Before entering onto any private property, a Provider shall make a good faith attempt to contact the property owners in advance, and describe the work to be performed. Nothing herein authorizes the Provider to trespass.

## 4-14- 11. GENERAL PROVISIONS

4-14-11.1 Conflicts. In the event of a conflict between any provision of this Ordinance and a Franchise entered pursuant to it, the provisions of this Ordinance in effect at the time the Franchise is entered into shall control.

4-14-11.2 Severability. If any provision of this Ordinance is held by any federal, state or local court of competent jurisdiction, to be invalid as conflicting with any federal or state statute, or is ordered by a court to be modified in any way in order to conform to the requirements of any such law and all appellate remedies with regard to the validity of the Ordinance provisions in question are exhausted, such provision shall be considered a separate, distinct, and independent part of this Ordinance, and such holding shall not affect the validity and enforceability of all other provisions hereof. In the event that such law is subsequently repealed, rescinded, amended or otherwise changed, so that the provision which had been held invalid or modified is no longer in conflict with such law the provision in question shall return to full force and effect and shall again be binding on the City and the Provider, provided that the City shall give the Provider thirty (30) days, or a longer period of time as may be reasonably required for a Provider to comply with such a rejuvenated provision, written notice of the change before requiring compliance with such provision.

4-14-11.3 New Developments. It shall be the policy of the City to liberally amend this Ordinance, upon Application of a Provider, when necessary to enable the Provider to take advantage of any developments in the field of Telecommunications which will afford the Provider an opportunity to more effectively, efficiently, or economically serve itself or the public.

4-14-11.4 Notices. All notices from a Provider to the City required under this Ordinance or pursuant to a Franchise granted pursuant to this Ordinance shall be directed to the officer as designated by the City Manager. A Provider shall provide in any Application for a Franchise the identity, address and phone number to receive notices from the City. A Provider shall immediately notify the City of any change in its name, address, or telephone number.

4-14-11.5 Exercise of Police Power. To the full extent permitted by applicable law either now or in the future, the City reserves the right to adopt or issue such rules, regulations, orders, or other directives that it finds necessary or appropriate in the lawful exercise of its police powers.

## 4-14-12. FEDERAL, STATE AND CITY JURISDICTION

4-14-12.1 Construction. This Ordinance shall be construed in a manner consistent with all applicable federal and state statutes.

4-14-12.2 Ordinance Applicability. This Ordinance shall apply to all Franchises granted or renewed after the effective date of this Ordinance. This Ordinance shall further apply, to the extent permitted by applicable federal or state law to all existing Franchises granted prior to the effective date of this Ordinance and to a Provider providing Services, without a Franchise, prior to the effective date of this Ordinance.

4-14-12.3 Other Applicable Ordinances. A Provider's rights are subject to the police powers of the City to adopt and enforce ordinances necessary to the health, safety and welfare of the public. A Provider shall comply with all applicable general laws and ordinances enacted by the City pursuant to its police powers. In particular, all Providers shall comply with the City zoning and other land use requirements.

4-14-12.4 City Failure to Enforce. A Provider shall not be relieved of its obligation to comply with any of the provisions of this Ordinance or any Franchise granted pursuant to this Ordinance by reason of any failure of the City to enforce prompt compliance.

4-14-12.5 Construed According to Utah Law. This Ordinance and any Franchise granted pursuant to this Ordinance shall be construed and enforced in accordance with the substantive laws of the State of Utah.

**SECTION III.** **EFFECTIVE DATE.** This ordinance shall become effective upon publication.

PASSED, APPROVED, AND ADOPTED this 20th day of November, 1997.

Park City Municipal Corporation

____________________________
Bradley A. Olch, Mayor

Attestation by:

____________________________
Jan Scott, City Recorder

Approved as to Form:

____________________________
Mark D. Harrington, Deputy City Attorney

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PARK CITY
1884

# COUNCIL AGENDA REPORT

**DATE:** November 20, 1997
**DEPARTMENT:** Administrative Services
**AUTHOR:** Tom Bakaly, Finance Manager; Toby Ross, City Manager
**TITLE:** Amendments to the Business License Ordinance and Fee Schedule
**TYPE OF ITEM:** Legislative

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**SUMMARY RECOMMENDATIONS:** The City Council should: 1) conduct a public hearing concerning the proposed Business License Ordinance and fee schedule changes; 2) amend by ordinance Title 4 of the Park City Municipal Code as it pertains to Business Licenses (attached); and 3) adopt the proposed Business License Fee Schedule effective January 1, 1998.

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## DESCRIPTION:

**A. Topic:** Proposed amendments to the Business License Ordinance and Fee Schedule

**B. Background:**

On November 13, 1997, the City Council reviewed proposed amendments to the Business License Ordinance and changes to the Business License Fee schedule. This report contains a summary of the material discussed on November 13, 1997 and additional information relating to the proposed ordinance and fee schedule amendments. The following attachments may be helpful when reviewing this report : 1) proposed changes to the Business License Ordinance; 2) the proposed Business License Fee Schedule (effective January 1, 1998; and 3) the Executive Summary of the consultant's report on Business License Fees.

History of City Business Licenses. The Park City Municipal Corporation started charging a business license fee during the early 1980's. The creation of the fee as a revenue source coincided with the start-up of the City's transit system. The business license and nightly rental fees have been dedicated to the transit system and the Transportation Fund (an enterprise fund). The Transportation Fund is also funded by resort City sales tax and transit sales tax revenues. While there have been numerous administrative adjustments to the system, there has not been a comprehensive revision to the business license ordinance since 1982. The City has not significantly increased the rate in roughly 10 years.

New Business License Computer system. The City's current business license system is approximately 10 years old. The business license module is the last component of the City's financial computer system to be converted to the new finance software. The City is in the final stages of that conversion process. Business license notifications or bills for calendar year 1998 should be sent by December 1, 1997 to comply with the Municipal Code. The business license bills for the upcoming year will be processed using the new computer system.

Changes in State Law and Impact to the City. As part of the 1997 legislative session, the State of Utah changed the powers of cities and towns to charge business license fees by adopting HB 98 (Local Taxing Authority) and SB 96 (Authority over Certain Rental Rates). Prior to the change in law, cities had the general authority to charge a business license fee for both regulatory and revenue purposes. The new law, effective January 1, 1998, allows only regulatory business license fees unless the fees fall under one of six "revenue" exceptions. The exception that is most relevant to the City is the one that states that revenues may be raised from a business license by "imposing a business license fee on businesses in order to provide an **'enhanced level'** of municipal services in an amount that is reasonably related to the services provided." A transit system that is free to the users is an enhanced level of service for City businesses. Therefore, Park City must show a connection between business license fees and the transit system.

**C. Analysis:**

Business License Fee Analysis. Staff decided to take a comprehensive look at the business license system and rate structure for the following reasons: 1) it had been years since the business license fee system had been reviewed and checked for accuracy; 2) the computer system conversion requires in-depth review to ensure accuracy; and 3) the changes in the State law require a connection between enhanced service levels and the business license fee. Staff contracted with a consultant to assist with this study, particularly as it pertained to the State law changes. The consultant has been helpful in the past with impact fee studies that are similar to this study.

New Business License Fees and Ordinance. Based on the study described above, staff has developed the following concepts for the new business license fee system and ordinance:

1) Revenue neutral: Assuming 1997 units of measure, the new fees should on a whole be revenue neutral. This means that if we simply used the old business license fee data from last year, approximately $512,000 would still be collected. This also means that if additional businesses were added or if there were increases in units of measure (uphill capacity), then revenues would increase. We are not recommending freezing the fee, nor are we recommending that it be increased to cover the full cost of the transit system. Holding variables constant, our goal was to generate about the same revenues in 1998 as we would have under the old system.

2) Simplify rates: The business license system has roughly 1,200 customers and hundreds of business licence codes (types). Each business type has different units of measure and rates. Based upon the consultant's enhanced service level analysis, staff recommends creating the following five categories for the new system: 1) Ski Resorts; 2) Lodging/Nightly rental; 3) Restaurant/Retail; 4) Office/Other; and 5) Miscellaneous.

3) Category Descriptions: The categories proposed under the new ordinance and fee schedule are described briefly below:

Ski Resorts: Two businesses (Deer Valley & Park City Mountain Resort) fall into this category. The ski resorts have been determined by the consultant's study to be the biggest beneficiaries from the transit system. At the November 13, 1997 informational meeting on business licenses, some questions were raised by Deer Valley about the appropriateness of using uphill capacity to calculate the business license amount for each resort. Staff has since discussed this issue with a representative from Deer Valley who agreed that uphill capacity should be used as the unit of measurement for 1998 provided that we review this issue again prior to next year's business license.

Lodging/Nightly rental: Most trips on the bus system originate or end at visitor bed base. Consequently, lodging and nightly rental businesses were also identified as a major beneficiaries of the bus system. This category applies to hotel rooms, condominiums and time share units. The unit of measure for this category is "bedroom." This unit of measure is fairly easy to verify with records from the Park City Chamber of Commerce and the Lodging Association.

Restaurant/Retail: The results of the consultant's study showed that the benefit derived by restaurant and retail businesses from the transit system were about the same. The unit of measure that is recommended is area in square feet. Under the old system, there was a multitude of different sub-categories within this category. The new system provides for the following four sub-categories: 1) Restaurant; 2) Retail; 3) Outdoor Dining; and 4) Large retail. The outdoor dining sub-category was needed for the restaurants that have outdoor dining. The per square foot rate for outdoor dining is roughly 1/4 of the rate for restaurants. A sub-category for large retail was needed to more accurately reflect the enhanced service component of the fee for businesses such as Albertsons, Dan's and Pay Less.

Office/Other: This category under the old system was a sort of "catch-all" for all other businesses. In addition, offices were required to calculate their business licenses using different fees depending upon the type of their office space (front office, service, back office, etc.). Under the new system, one rate for square footage is used. The majority of businesses in this category will see a straight percentage reduction in their business license amount from last year due to the enhanced service study performed by the consultant. However, the consultant's analysis shows that a free bus system benefits almost all businesses to some extent.

The recommended fee schedule delineates the following three sub-categories for this category: 1) Office, Service, other; 2) Warehouse; and 3) Resort Based. A warehouse category is needed to address enhanced service level issues. Resort based services such as snowmobile rides, and balloon rides required a separate category to reflect the impact per user of these businesses.

Miscellaneous: This category includes uses that do not conveniently fit within the other categories. The new system provides for the following four sub-categories: 1) Taxis, Buses and Limousine Services; 2)Commercial Vehicles and Trailers; 3) Commercial Vending, Game and Laundry Machines; and 4) Employee Based Businesses.

A few businesses use vehicles as the unit of measure. Staff recommends two separate sub-categories for these businesses to ensure accuracy of the system.

- Businesses that transport people to, from and within Park City or rent them a vehicle in Park City (the *Taxis, Buses and Limousine Services* sub-category) derive a direct benefit from a free bus system. The fee for this sub-category should reflect those benefits according to the findings of the consultant's study.

- Businesses that just use vehicles in their normal course of business (the *Commercial Vehicles and Trailers* sub-category) derive less substantial and direct benefit from a free bus system. The fee for this sub-category is correspondingly lower.

Staff established a sub-category of *Employee Based Businesses* (rather than creating a separate unit of measure) to reflect the relationship between employees and the potential for use of the transit system. Businesses that own or lease machines (the *Commercial Vending, Game and Laundry Machines* sub-category) use the number of machines as the unit of measure and had to be defined separately. These businesses are charged an administrative/regulatory fee and an enhanced service fee per machine.

4) Proposed Business License Fee components: The Business License fee itself is broken down into the following components:

Administrative & Regulatory. The administrative and regulatory fee is based upon the cost to the City of establishing, implementing, administering and enforcing the business license system. Included in the total cost is the amortized cost of the computer and software system, administrative personnel, supervisory personnel, the consultant's enhanced service study, and enforcement. New businesses are charged an additional $15 to cover the cost of inspecting the business. As a result of comments from the November 13th meeting, staff has included additional costs for enforcement of the business license ordinance. These costs include enforcement personnel and integration of the business license system with the City's sales tax monitoring system. This computer enhancement will allow the City to cross-reference business license data with businesses that are paying sales taxes.

Enhanced Service Level: The enhanced service fee is based on the share of the costs assigned to business licenses for the operation of the transit system and the proportional benefit of that system received by the various categories of businesses. For example, business licenses accounted for about 21.8 percent of the revenue used for the operation of the transit system in fiscal year 1996-97 (legally the entire system could be paid for from business licences which would increase almost five times). Ski Resorts received about 33 percent of the benefit of the transit operation. Therefore, Ski Resorts, as a category, should have a business license fee that would generate about seven percent of the annual cost of transit service. The findings of the consultant regarding use of and access to transit services translate into an average benefit analysis by category; the analysis is not specific to each business. Those findings are discussed in the attached executive summary. The detailed study is also available for review.

Liquor Licenses: Liquor licenses are a part of a different fee system and will remain unchanged from the old ordinance.

5) Category shifts in fees: While total revenue remains about the same, there are shifts among business categories. The "Summary Business License Change" table below shows the average shift among categories. Ski resorts, lodging, restaurants and retail on average increased. Office and other businesses on average went down or stayed the same to reflect the enhanced service analysis.

Summary Business License Change Table

| Category | New System Revenue | % Increase (Decrease) Old vs New System | Unit of Measure |
|---|---|---|---|
| Office Other | 81,372 | (23%) | Various |
| Ski Resorts | 169,923 | 10% | Uphill Capacity |
| Restaurant/Retail | 153,136 | 5% | Square Foot |
| Overnight Lodging | 92,876 | 7% | Bedroom |
| Miscellaneous | 14,837 | (20%) | Various |
| Total* | 512,144 | * Differs slightly from what was shown on 11/13/97 | |

For example, a business in the nightly rental category would have its business license calculated as follows:

| Old Qty | Old Price | Old Total | New Qty | Enhanced Svc. Price | New Admin. Reg. Fee | New Total |
|---|---|---|---|---|---|---|
| 100 | 15 | $1,500 | 100 | 15.40 | 46.00 | $1,586 |

This example represents about a 5.8% increase for this business. The cost of an individual license for a particular business may have gone up or down within each category. What you see in the "Summary Business License Change" table is an average. Some categories contribute more than others to business license revenue.

Business Community Outreach Efforts: City staff has met with individuals in leadership of the following business or community associations: 1) Chamber of Commerce; 2) both ski resorts; 3) Main Street Merchants Association; 4) Restaurant Association; 5) Lodging Association and 6) individuals from the Office/Other category. During the week of November 17, 1997, City staff also will attend board meetings of some of the associations described above. Staff will request that they be placed on the agenda of the December board meetings of relevant organizations.

In addition to the general discussions with affected businesses and their associations, staff recommends that discussions with individual businesses occur after the business license notices have been sent out. We will include a letter with the license renewals. The additional information will describe the changes to the ordinance. In addition, staff will schedule a workshop for the middle of December to assist individuals with their business licenses. Lastly, the letter will outline an administrative review process where staff will verify that licenses are calculated properly and businesses are listed in the correct categories. This will be an informal appeals process that will allow staff to make changes to licenses as necessary.

D. **Departmental Review:**

Revisions to the Business License Ordinance and fee structure has been reviewed by the City Manager's Office, the Administrative Services Division, and the Legal Department. The Legal Department recommended a business license workshop which is scheduled for December.

**ALTERNATIVES:**

1) Adopt the attached changes to the business license ordinance and adopt the attached business license fee schedule effective January 1, 1998. This is staff's recommendation.

2) Make changes to the proposed new ordinance and fee schedule. Such changes may include adding or deleting costs used to calculate the administrative and regulatory fee. For example, City Council may want to implement a more comprehensive enforcement program. This action would cause the administrative/regulatory fee to increase.

3) Amend the ordinance only so that notices could be sent out later than the December 1, deadline. This additional time would allow staff to address and correct any identified problems with the new Business License Ordinance and fee schedule and continue to inform businesses of the proposed changes. The effective date of the license would have to be January 1, 1998 per State law, but the payment date could be extended past January 1 for this year only. Keeping the December 31 deadline would require a shorter turnaround time for businesses to submit their renewals if notices were allowed to go out after December 1.

4) Continue the Item: In order to continue the item, City Council should amend the current business license ordinance so that notices could be sent out after December 1. If the item is continued, City Council should address the legal issues described above.

5) Do Nothing: Same as Continuing the item.

**SIGNIFICANT IMPACTS:**

The proposed action amends the City's current business license ordinance and business license fee schedule to comply with State law. Pursuant to the new State law, business license revenue will be characterized as a fee as opposed to a tax. Business license fees will have a reasonable relationship to the costs of regulating the system and the enhanced level of service provided to the business categories described above. The changes to the fee schedule are designed to be revenue neutral overall, but individuals may experience significant fee fluctuations (up or down). These fluctuations are caused by correcting certain issues in the old business license system and the implementation of the enhanced service concept described in the consultant's attached report.

**CONSEQUENCES OF NOT TAKING THE RECOMMENDED ACTION:**

If City Council would like staff to take a significantly different approach to business licenses, City Council should amend the current business license ordinance so that notices could be sent out after December 1. City Council should provide staff with direction for amending the business license ordinance so the requirements of the State law could be met. Not adopting an *enhanced services* rate structure would reduce by about 90 percent the amount of money the City could legally collect from business licenses.

**RECOMMENDATION:**

The City Council should:

1) Conduct a public hearing concerning the proposed Business License Ordinance and fee schedule changes

2) Amend by ordinance Title 4 of the Park City Municipal Code as it pertains to Business Licenses (attached)

3) Adopt by ordinance the proposed Business License Fee Schedule effective January 1, 1998

## Business License Fee Schedule

| | Service Enhancement Fee | | Administrative Fee | |
|---|---|---|---|---|
| | Rate | Unit of Measure | Rate | Unit of Measure |
| Ski Resort | $4.40 | Uphill Capacity | $46.00 | Licensee |
| Lodging | $15.40 | Per Bedroom | $46.00 | Licensee |
| Restaurant /Retail | | | | |
| Restaurant | $0.185 | Per Sq. Ft. | $46.00 | Licensee |
| Outdoor Dining | $0.052 | Per Sq. Ft. | $46.00 | Licensee |
| Retail | $0.185 | Per Sq. Ft. | $46.00 | Licensee |
| Large Retail (greater than 12,000 sq. ft.) | $0.129 | Per Sq. Ft. | $46.00 | Licensee |
| Office/Other | | | | |
| Office, Service, Other | $0.165 | Per Sq. Ft. | $46.00 | Licensee |
| Warehouse | $0.047 | Per Sq. Ft. | $46.00 | Licensee |
| Resort and Amusement | $0.828 | Per User | $46.00 | Licensee |
| Miscellaneous | | | | |
| Taxies, Buses and Limousine Services | $30.00 | Per Vehicle | $46.00 | Licensee |
| Other Commercial Vehicles and Trailers | $6.00 | Per Vehicle | $46.00 | Licensee |
| Employee Based | $3.00 | Per Employee | $46.00 | Licensee |
| Commercial Vending, Game and Laundry Machines | $15.00 | Per Machine | $46.00 | Licensee |

**Ordinance No. 97-__**

**AN ORDINANCE AMENDING TITLE 4 OF THE MUNICIPAL CODE OF PARK CITY RELATING TO BUSINESS LICENSING TO REPLACE THE BUSINESS LICENSE REVENUE TAX WITH A REGULATORY FEE AND FEE ATTRIBUTED TO AN ENHANCED LEVEL OF SERVICE, AND REPEALING THAT SECTION OF RESOLUTION 97-2 RELATING TO SUCH BUSINESS LICENSE REVENUE TAXES**

**WHEREAS**, the state legislature amended Utah Code Ann. §10-1-201 to revise municipal authority with regard to revenue generation through business license fees;

**WHEREAS**, the state legislature identified transportation services as municipal services eligible for revenue generation by business license fees;

**WHEREAS**, the City wishes to timely comply with said legislation by amending its business license ordinances;

**WHEREAS,** the City's business license fee schedule had not been overhauled in over 10 years;

**WHEREAS**, a public hearing was held on November 20, 1997; and

**WHEREAS**, the following ordinance is deemed by the City Council to be in the best interest of the residents of Park City;

**NOW, THEREFORE, BE IT ORDAINED** by the City Council of Park City, Utah as follows:

SECTION I. PURPOSE. The purpose of the new business license fees enacted hereby, the level of basic municipal services and an explanation of the amount of the fees reasonably related to the enhanced level of municipal services are explained in the Executive Study attached hereto as **Exhibit A** and incorporated herein by reference.

SECTION II. AMENDMENT. Chapter 1, Title 4 of the Municipal Code of Park City is hereby amended as follows:

The following definitions are hereby added to MCPC § 4-1-1 and the definitions are re-numbered accordingly:

## 4-1-1 DEFINITIONS.

COMMERCIAL VEHICLES AND TRAILERS - Businesses that utilize motor vehicles as their normal course of business, but do not transport people to, from and within Park City for a fee. Such Businesses include but are not limited to delivery trucking, commercial hauling, snow removal services, u-haul or other cargo rental vehicles, concrete trucks and dump trucks.

EMPLOYEE BASED - Businesses which lease or otherwise provided employees to other Businesses or any Person in return for consideration. Such Businesses include but are not limited to employment agencies and security firms.

LICENSE FEE(S) - includes the administrative fee and service enhancement fee as defined by the Business License Fee Schedule.

SECTION III. AMENDMENT. Chapter 2, Title 4 of the Municipal Code of Park City is hereby amended as follows:

## 4- 2- 5. APPLICATION FEE.

Each license application shall be accompanied by the ~~revenue~~ business license ~~tax~~ fee required to be paid for the issuance of the license desired.

## 4- 2- 6. REFUND OF FEE ~~AND TAX.~~

Unless otherwise provided herein, no ~~revenue~~ business license ~~tax~~ fee is refundable for any reason whatsoever, once the license has been issued by the City, except when the license was issued in error. If a license is denied, applicant shall be entitled to a refund of the amount paid in excess of twenty-five dollars ($25.00). The sum of twenty-five dollars ($25.00) shall be retained to offset application processing costs.

## 4- 2- 7. INVESTIGATION.

~~Within five (5) days after receipt by the Director or his or her designee of a license application~~Upon a reasonable belief that the applicant or Licensee has a fraud or felony conviction or prior criminal background or pending criminal proceeding, the Director ~~has the discretion to~~ may refer the application or Licensee for investigation to the Police Department. The Director or his or her designee may at any time inspect the business premises during normal business hours or request business documents maintained pursuant to 4-2-26 to verify a new application or existing Licensee.

**4- 2- 9. LICENSE DENIAL/REVOCATION.**

The Director or his or her designee may deny or revoke a license if the applicant:

(A) Has been convicted of a fraud or felony by any state or federal court within the past five (5) years or now has criminal proceedings pending against him in any state or federal court for fraud or a felony;

(B) Has obtained a license by fraud or deceit;

(C) Has failed to pay personal property taxes or other required taxes or fees imposed by the City; or

(D) Has violated the laws of the State of Utah, the United States Government, or the ordinances of Park City governing operation of the business for which the applicant is applying for the license.

**4- 2-16. SEPARATE BUSINESSES, LICENSED PREMISES.**

Where two or more persons conduct separate businesses at the same location, each such person shall obtain a separate license for each such business and pay the required license ~~tax~~ fee for such business. Where a person is a licensee pursuant to provisions in the Beer and Liquor Licensing chapter of this Title, that person shall obtain a separate business license for each licensed premises.

**4- 2-17. REGULATORY AND SERVICE ENHANCEMENT ~~REVENUE TAX~~ FEES IMPOSED.**

There is hereby imposed and levied an annual business license ~~revenue tax~~ fee on the types of businesses and in the amounts described below in the Business License Fee Schedule. ~~The rate of tax, if not otherwise stated, shall be the product achieved by multiplying the square footage of the place of business by the rate stated. The tax rates set forth in the Table appended to the fee resolution are incorporated herein.~~

(See Business License Fee Schedule Next Page)

## Business License Fee Schedule

| | Service Enhancement Fee | | Administrative Fee | |
|---|---|---|---|---|
| | Rate | Unit of Measure | Rate | Unit of Measure |
| Ski Resort | $4.40 | Uphill Capacity | $46.00 | Licensee |
| Lodging | $15.40 | Per Bedroom | $46.00 | Licensee |
| Restaurant /Retail | | | | |
| Restaurant | $0.185 | Per Sq. Ft. | $46.00 | Licensee |
| Outdoor Dining | $0.052 | Per Sq. Ft. | $46.00 | Licensee |
| Retail | $0.185 | Per Sq. Ft. | $46.00 | Licensee |
| Large Retail (greater than 12,000 sq. ft.) | $0.129 | Per Sq. Ft. | $46.00 | Licensee |
| Office/Other | | | | |
| Office, Service, Other | $0.165 | Per Sq. Ft. | $46.00 | Licensee |
| Warehouse | $0.047 | Per Sq. Ft. | $46.00 | Licensee |
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| Miscellaneous | | | | |
| Taxies, Buses and Limousine Services | $30.00 | Per Vehicle | $46.00 | Licensee |
| Other Commercial Vehicles and Trailers | $6.00 | Per Vehicle | $46.00 | Licensee |
| Employee Based | $3.00 | Per Employee | $46.00 | Licensee |
| Commercial Vending, Game and Laundry Machines | $15.00 | Per Machine | $46.00 | Licensee |

## 4- 2-18. REGULATION OF SPECIFIC BUSINESSES

The minimum fee assessed for each business shall be as set forth in the rate tables as adopted by ~~resolution~~ 4-2-17 unless set forth specifically in the sections below.

(A) **VENDING MACHINES/MECHANICAL DEVICES** It shall be unlawful to install or permit to be installed, any kind of mechanical device operated by coin, token, or currency, which sells goods, merchandise, food, beverages, candy, or entertainment services without first having paid the applicable ~~tax~~ fee on that mechanical device. Further, it shall be unlawful for any person to permit ~~an untaxed~~ a machine to be placed on his premises or within his place of business any such mechanical device on which the ~~tax~~ fee has not been paid. The license for such a mechanical device, and the receipt showing payment of the license fee, shall take the form of a sticker to be placed in a visible location on the machine or device. The placement of a current sticker shall be prima facie evidence of payment of the license fees as far as the owner of the premises in which the machine is installed is concerned, and the owner of such premises or place of business shall be entitled to rely on the display of a current sticker as proof that the machine has been properly licensed. It is the duty of the owner of the machine to pay the ~~tax~~ fee, place the license sticker on the machine, and see that it is continuously displayed.

License certificate stickers on vending machines and electronic game machines shall be marked with the description of the machine, and designed so that the license sticker is not removable without destroying the sticker. There shall be a sticker on each machine. In the event a machine is replaced by another machine of a similar nature, the sticker on the machine to be replaced may be surrendered to the Division, and a new sticker issued for the replacement machine without additional charge.

~~A business which operates a fleet of food and/or beverage vending and video and/or amusement machines, meeting the criteria established in the definition of "arcade" defined in Chapter 1, may purchase a fleet license for all machines operated by that business at the rate established by the Rate Table per year in lieu of individually licensing all machines. A license sticker shall be issued for each machine in the fleet regardless of number. This fleet license shall not apply to video games, electronic entertainment devices, billiards or other similar devices not meeting the "arcade" definition criteria.~~

(B) **CONTRACTORS AND BUILDERS**. All general contractors and subcontractors, including but not limited to, builders, electricians, plumbers and back flow device technicians, with their principal place of business within Park City shall be assessed a regulatory license fee each year as set forth in the rate tables. Said fee must be paid and a business license issued prior to engaging in any construction within the City unless exempted from licensure under U.C.A. § 58-55-6(7) or Section 4-2-20 of this chapter.

No contractor shall be issued a business license under this section unless and until he has provided a certified statement that he is currently licensed with the State of Utah Department of Business Regulation, including the state license number(s) and date of expiration. If said state license expires prior to December 31st of the year, each contractor must provide proof of renewal within ten (10) days of renewal or shall forfeit the City license for the balance of the year.

~~Contractors with their principal place of business within Park City engaged in excavating, hauling or concrete delivery are also assessed an additional fee under Section 4-2-18(H) based on the size and number of trucks.~~

Contractors ~~with their principal place of business within Park City~~ are required to obtain a separate office business license ~~(Code C1521-10)~~.

(C) **NIGHTLY RENTAL** All nightly rental units must be licensed before being offered for rent. Any persons offering to rent night rental units on behalf of an owner must hold a valid Utah real estate broker's license pursuant to § 61-2-1 of the Utah Code, or must be affiliated with a licensed broker. Owners may offer to rent only units in which they hold an ownership interest.

(1) **License Issuance**. The business license for rental of units under this section will be issued by the City upon payment of necessary fees and upon a finding by the staff that the review criteria established below have been satisfied.

(2) **Licensee**. The licensee for rentals under this section shall be both the local representative and the owner. The local representative shall be deemed the responsible party.

(3) **Application Procedure**. All new and renewal applications must contain the property manager's name, a sales tax collection and accounting number, the street address of each unit, the name and address of a local responsible party who is available by telephone 24 hours per day and all other information requested on the application forms. The application includes a cover form which contains information common to all units managed, and unit forms which contain information on each unit managed. It is the licensee's duty to supplement both forms as information changes or as units change from one manager to another.

(4) **Management Standards**. The lodging authorized under Section 4-1-17(D) must be properly managed. As a condition to holding a valid license, the licensee agrees to provide or arrange for adequate property management services. In the event an owner's association exists, it shall be responsible for property maintenance. In the event an owner agrees to be responsible for property maintenance, the licensee must present a statement to that effect signed by the owner. The minimum services required include:

(a) Snow removal during winter months to a level that allows safe access to the building over the normal pedestrian access to the unit.

(b) Snow removal service to off-street parking facilities associated with the rental property so that off-street parking is at all times available for use of the occupants.

(c) Summer yard maintenance, including landscaping, weed control, and irrigation to a level that is consistent with the level of landscaping and maintenance on adjoining and nearby properties.

(d) Structural maintenance to preserve substantial code compliance as described above is required.

(e) Routine upkeep, including painting and repair to a level that is consistent with the level of maintenance on adjoining or nearby properties.

(f) Trash collection which insures that trash cans are not left at the curb for any period in excess of 24 hours and the property must be kept free from accumulated garbage and refuse.

(g) Housekeeping service as a part of hotel or property management company: included in property management license.

(5) **Noise and Occupancy Control**. The licensee and the owner of rentals under this section are responsible for regulating the occupancy of the unit and noise created by the occupants of the unit. Unreasonable noise levels, or unreasonable occupancy loads, failure to use designated off-street parking, toleration of illegal conduct or other abuses which rise to the level of public or private nuisance is a violation of the license and considered grounds for revocation ~~under ****Section 15~~. Failure to collect and deposit sales tax is also a violation of the license and grounds for revocation~~ under Section ****15~~.

(6) **Review Criteria**. In determining whether or not a business license for rental authorized under this Section shall be issued, the application shall be reviewed to see if, in addition to standards and conditions applicable to issuance of all business licenses, the following conditions and standards are met:

(a) The unit is located within a zone and subzone designated as allowing rentals for the period which the license is applied for.

(b) The Park City Building Department has reviewed the business license application for compliance with the Code for Abatement of Dangerous Buildings. Inspection of the unit may be required under Section 4-2-8. The applicant shall bear the cost of any such inspection and any reinspection which may be required. The cost shall be determined by the prevailing hourly rate of the Park City Building Department.

(c) The access to the rental unit and the layout of the unit is such that noise and physical trespass from the proposed rental unit is not likely to be a substantial intrusion to the adjoining properties. If the proposed rental units is a single family home or duplex and shares an access, hallway, common wall, or driveway with another dwelling, written consent of the owner of the other dwelling is required.

(d) The applicant must designate a responsible party. The responsible party must be a property management company, realtor, lawyer, owner, or other individual who resides within Summit County, or, in the case of a company, has offices in Summit County. The responsible party is personally liable for the failure to properly manage the rental. The responsible party must be available by telephone, or otherwise, 24 hours per day, and must be able to respond to telephone inquiries within twenty (20) minutes of receipt of such inquiries by that party's answering machine, paging device or answering service. The responsible party is also designated as the agent for receiving all official communications under this Title from Park City. If the licensee is a property management company or individual other than the owner, such company or individual must comply with applicable state law, including UCA 61-2-2, 1953, as amended, which requires those who receive valuable consideration to lease property to have a state license.

(e) The application must bear a sales tax collection and accounting number for the rental operation. This number may be the sales tax accounting number used by the property management company responsible for that unit, or may be specific to the unit, but no license will be effective until the sales tax number is provided.

(D) **RESTAURANTS, FOOD SERVICE, TAVERNS, ETC.**.

(1) Outdoor dining areas connected with any food service establishment shall be assessed at a rate lower than the rest of the establishment.

(2) Catering services shall be licensed at the rate established in the Rate Tables per ~~year~~ employee unless part of a full service restaurant or part of a restaurant operation, in which case catering is included in that license.

(3) Mobile vending trucks, serving construction sites only shall be assessed at the rate established in Business License Fee Schedule ~~Rate Tables~~. ~~The license certificate shall be issued in the manner described in Section ***18.08.~~

(E) **BUILDING MATERIAL, HARDWARE, LUMBER**. Lumber stores shall be assessed at the retail rate by square foot of space under roof, including retail areas, lumber storage, and shop space, but shall not be assessed for uncovered yard space.

(F) **AUTOMOTIVE SERVICES**. Car rental businesses shall be assessed at a rate per car ~~based in Park City~~ for rental purposes as of January 1 of each license year, ~~but not less than the minimum dollar amount per rental agency~~, as established in the rate tables.

(G) **TRANSPORTATION SERVICE, PASSENGER AND FREIGHT, SERVICE AND DELIVERY TRUCKS**. License certificates shall take the form of a sticker to be placed on each licensed vehicle. The Division shall design stickers that are suitable for this use, and non-removable without the sticker being destroyed. Various kinds of stickers may be used to show the term of a license if issued for less than one year. The sticker shall be displayed on all service, freight delivery, passenger service, and taxis at all times. If no sticker is displayed, it is prima facie evidence that no license was issued. Delivery and service vehicles with a business location in Park City, on which a license fee is issued on a square footage basis shall be exempt.

(1) Ready-mix concrete trucks, ore hauling trucks, dump trucks, drilling apparatus trucks, cranes, concrete pumping trucks, and other truck-based construction or excavation equipment shall be assessed ~~on the gross vehicle weight of the truck in question, up to a total charge~~ as set forth in the rate tables per business engaged in such business.

~~(2) Notwithstanding the provisions of the foregoing Section 18.08(B), businesses which operate a fleet of trucks and trailers may purchase a fleet license for all vehicles operated by that business at a rate as established by the rate tables per year, in lieu of individually licensing all vehicles. A license sticker shall be issued for each vehicle in the fleet, regardless of number.~~

(2~~3~~) Businesses which utilize trucks in construction activity are subject to both the fee provisions of this section and also those ~~of Section 18.03~~ for contractors except that an unlimited number of trucks, not exceeding 9,000 pounds gross vehicle weight, may be used in the construction activity without any charge applied to the vehicle.

~~(H) **Entertainment and Recreation Facilities**. Ski resorts shall be assessed at a rate set forth in the Section 18.01 RATE TABLE multiplied by the hourly uphill user capacity of the resort (See Section 4-1-2 Definitions)~~

**4- 2-20. REVENUE MEASURE.**

The revenue license ~~tax~~ fee provided for in this Chapter is imposed ~~both~~ to raise revenue for an enhanced level of municipal services~~and for regulatory purposes,~~. The fees are ~~but is~~ in addition to and not a substitute for other regulatory ordinances of Park City. The revenues raised through the revenue ~~tax~~ fee shall be used ~~primarily~~ to defray the costs incurred by the City in operating, maintaining, and replacing the City transit system.

**4- 2-21. EXCEPTIONS TO BUSINESS REVENUE LICENSE ~~TAX~~ FEE.**

No business ~~revenue~~ license ~~tax~~ fee shall be imposed under this Chapter upon the following persons or businesses:

(A) Any person engaged in business for solely religious, charitable, eleemosynary, or other types of strictly non-profit purposes who is tax exempt in such activities under the laws of the Untied States and the State of Utah, nor shall any revenue license ~~tax~~ fee be imposed on any person engaged in a business specifically exempted from municipal taxation and fees by the laws of the United States or the State of Utah; nor shall any revenue license tax be imposed on any non-profit corporation duly incorporated according to the provisions of the Utah Non-Profit Corporation and Cooperative Association Act; ~~nor shall any revenue license tax be imposed upon any person not maintaining a place of business within Park City who has paid a like or similar revenue license tax or fee to some other taxing unit within the State of Utah, and which taxing unit exempts from its license tax or fee, by reciprocal agreement or otherwise, business domiciled in Park City and doing business in such taxing unit~~;

~~(H) Any contractor, builder, electrician, plumber, etc., licensed under U.C.A. § 58-55-1, et seq, with a principal place of business outside of Park City or as exempted by state law.~~

**4- 2-23. FEE ~~AND TAX~~ PAYMENTS, RENEWALS AND PENALTY.**

The annual business ~~revenue~~ license ~~tax~~ fee provided in this Title shall be due and payable to the City on or before the first day of January of each year for renewals of licenses for businesses which were licensed the previous year. Business licenses for previously unlicensed businesses shall be issued for the unexpired portion of the calendar year in which issued unless issued between October 1 and December 31, in which case the license shall be valid until December 31 of the year following the issuance of the license, upon payment of 125% of the annual license fee, as set forth in Section 4-2-13 above.

If the renewal license fee is not paid on or before January 15 of the year in which the renewal license is due, there shall be a business license enforcement fee imposed of twenty-five percent (25%) of the license fee imposed by this Chapter or Twenty-Five Dollars ($25.00) whichever is greater.

If the renewal license fee is not paid in full on or before February 15th of the year in which the renewal fee is due, the business license enforcement fee shall be increased to fifty percent (50%) of the license fee imposed by this Chapter or Twenty-Five Dollars ($25) whichever is greater.

If the renewal license fee is not paid on or before March 1st of the year in which the renewal fee is due, the business license enforcement fee shall be increased to one-hundred percent (100%) of the license fee imposed by this Chapter.

Upon a proper showing that the business is of such a seasonal nature that business has not been conducted to date, the Director or his or her designee may waive the business license enforcement fee of said renewals.

Upon a showing of hardship acceptable to the Director or his or her designee, the licensed business may be allowed to pay the business license fees due over a period of time not to exceed three (3) months from the due date, with interest on the unpaid balance at the rate of 18% per annum

Any previously licensed business cited for engaging in business in violation of this Title shall have five days from the date of citation to come into compliance with this Title. Failure of the licensee to reach compliance within five days of the date of citation will subject the business to closure and the licensee to all applicable civil and criminal penalties.

If a licensed business enlarges its place of business or increases its capacity for conducting business (I. e., adding square footage, increasing number of vending machines, number of employees, bid limits, or increasing hourly user capacity), an additional ~~revenue~~ license ~~tax~~ fee shall be due and payable to the City and shall be prorated on the basis of one-twelfth (1/12th) of the total annual ~~tax~~ fee on the enlargement or increase for each month remaining in the unexpired portion of the calendar year, including the month in which such increase is accomplished. The additional ~~revenue~~ license ~~tax~~ fee for adding square footage shall be due and payable on the date the City issues the occupancy permit.

### 4- 2-24. RENEWAL BILLING PROCEDURE.

On or before December 1 of each year, the division shall send a statement to each current licensee within the City, which statement shall be upon forms calling for the computation by the licensee of a ~~revenue~~ license ~~tax~~ fee for the ensuing year based upon the nature of the business, square footage, ~~bid limits,~~ employees, and other pertinent factors.

### 4- 2-25. RENEWAL OF LICENSE CERTIFICATE.

Upon receipt of the ~~revenue~~ license ~~tax~~ fee, the Division shall issue a license certificate valid through December 31 of the next year.

### 4- 2-26. RECORDS TO BE MAINTAINED.

It shall be the duty of every person liable for the payment of any ~~revenue~~ license ~~tax~~ fee imposed by this Title to keep and preserve for a period of three (3) years such books and records as will accurately reflect the factors used in determining the amount of the ~~revenue~~ license ~~tax~~ fee for which he may be liable under this Title.

### 4- 2-27. ~~REVENUE TAX~~ LICENSE FEE ADJUSTMENT TO AVOID BURDENING INTERSTATE COMMERCE.

The business ~~revenue~~ license ~~tax~~ fee imposed by this Title shall not be applied so as to place an undue burden on interstate commerce. In any case, where the ~~revenue~~ license ~~tax~~ fee is believed by a licensee or applicant for a license to place an undue burden upon interstate commerce, such licensee or applicant may apply to the Director, or his or her designee, for an adjustment of the fee so as to relieve such burden. The licensee or applicant shall, by supporting other information as the Director, or his or her designee, may deem necessary in order to determine the extent, if any, of such undue burden. The Director, or his or her designee, shall then conduct an investigation, comparing the subject business with other businesses of like nature and shall make findings of fact from which he shall determine whether the ~~revenue~~ license ~~tax~~ fee is discriminatory, unreasonable or unfair as to the licensee or applicant from the standpoint of its impact on interstate commerce and shall recommend to the City Council an appropriate ~~revenue~~ license ~~tax~~ fee under the circumstances and the City Council shall fix the ~~revenue~~ license ~~tax~~ fee in such amount. If the regular ~~revenue~~ license ~~tax~~ fee has already been paid, the City Council shall order a refund of any amount over and above the amount of the ~~revenue~~ license ~~tax~~ fee fixed, if any. In fixing the ~~tax~~ fee to be charged, the Director, or his or her designee, may use any method which will assure that the ~~tax~~ fee assessed shall be uniform with that assessed on business of like nature; provided, however, that the amount assessed shall in no event exceed the regular ~~tax~~ fee prescribed in this Title.

**SECTION IV. AMENDMENT**. Chapter 10, Title 4 of the Municipal Code of Park City is hereby amended as follows:

## CHAPTER 10 - FRANCHISED UTILITIES AND CABLE TELEVISION OPERATORS

### 4-10-1. BUSINESS LICENSE REQUIRED.

All franchised utilities and cable television operators must obtain from the city a license to do business within the city. It shall be unlawful for a franchised utility or cable television operator to conduct business in Park City without a license. The City shall not charge any business license fee, but the fees for the Franchise License amount below and any Franchise Fee imposed by virtue of a Franchise Agreement must be timely paid to receive a business license.

### 4-10-2. FRANCHISE LICENSE ~~TAX~~.

There is hereby imposed on all franchised utilities, except "Energy Suppliers" taxed pursuant to Chapter 13, Title 4, and cable television operators who conduct business within the city a Franchise License~~license tax~~. The Franchise License~~license tax~~ shall be three and one-half percent (3.5%) of the gross revenue of the franchised utilities or cable television operator derived from the sale of its service or product within Park City's corporate limits. For purposes of this chapter, gross revenue shall include all revenue generated from the sale of the franchisee's product or service. The franchise fee imposed by other ordinances as a consideration for granting the franchises shall be excluded from the gross revenue.

### 4-10-3. EXCLUSIONS.

This ~~gross revenue tax~~ Franchise License fee shall not apply to "Energy Suppliers" taxed pursuant to Chapter 13, Title 4, or revenue derived from the sale of household appliances by a franchisee, service of appliances, or to the sale or rental of telephone switching equipment not included in "exchange access service".

### 4-10-4. SCOPE OF TELEPHONE AND TELECOMMUNICATION SERVICES.

For the purpose of determining gross revenue in accordance with Section 4-10-2 for telephone and telecommunication service, the following will apply:
"Telephone service" means those services which may lawfully be taxed under the provisions of U.C.A.§ 11-26-1 (1993), or any successor provision, including: 1) exchange access service; 2) extended area service; 3) customer access line charges; and 4) any service for which a tax or other charges was being paid pursuant to Utah Code Section 11-26-1, this chapter or previous applicable ordinances as of January 1, 1992.

However, with respect to customer access line charges for Centron/Centrex services, the ~~tax~~ fee shall be applied on a trunk equivalency basis or as though Centron/Centrex network access registers were PBX trunks on which customer access line charges would be assessed.

"Telephone service" does not include any customer access line charge or extended area service that is provided as part of the Utah Low Income Assistance Program as set forth in the "Lifeline" Rule of the Utah Public Service Commission.

"Exchange access service" means telephone exchange lines or channels, and services provided in connection with them, which are necessary to provide access from the premises of a subscriber to the local switched public telecommunications network of the public utility to effect communication or the transfer of information. "Exchange access service" does not include (1) private line service; (2) long distance toll service; (3) carrier access service; (4) telephone services that are not regulated by the Utah Public Service Commission; and (5) services that emulate functions available in customer premises equipment.

**4-10-5. PAYMENT OF ~~TAX~~FEE.**

The ~~license tax~~ fee is payable in monthly installments which shall be due on or before the fifteenth (15th) day of the month following the billing cycle of the utility or cable television operator. The ~~tax~~ fee shall be paid on the basis of the preceding month's actual collections. A service charge of one and a half percent (1.5%) per month of the total amount due may be imposed on late payments.

**4-10-6. PENALTY.**

The operation of a franchised utility or cable television business within Park City without paying the required ~~tax~~ fee shall be a Class "B" misdemeanor punishable by a fine of not more than two hundred
and ninety-nine dollars for each day of each violation and imprisonment of the corporate officials responsible for the violation for not more than six months in the County jail for each day of each violation. These criminal penalties are in addition to, and not in lieu of a civil action to recover the license ~~tax~~ fee due, or a civil action to terminate the franchise. Each connection to the utility or cable television system through which service is provided by the franchisee is hereby deemed a separate transaction or sale, and each such sale, while unlicensed, shall constitute a separate violation.

**~~4-10-7. TAX ON THE GROSS REVENUES OF BUSINESSES IN COMPETITION WITH UTILITIES.~~**

~~Tax levied. There is hereby levied on the business of every person or company engaged in the business within this city, of supplying telephone services, gas, electric energy in competition with any public utility, an annual license tax based on the revenue derived from the sale and use of the service or equipment of such business from users located with the city limits of Park City.~~

~~(A) **DEFINITIONS**. As used in this Section:~~

~~(1) "In competition with public utilities" - to trade in products or services within the same market as a public utility taxed pursuant to §4-10-2.~~

~~(2) "Gross revenue" - all revenue generated from the sale of the person's product or service within Park City's corporate limits. Telephone and telecommunication services shall be treated the same as in § 4-10-4.~~

~~(3) Public utility service - the sale and use of electrical power and energy, natural gas and local exchange telephone services.~~

~~(B) **AMOUNT OF TAX**. The amount of the annual license tax hereby levied shall be equal to three and one-half percent of the gross revenue derived from the sale of services or equipment of all businesses in competition with public utilities from users located within Park City.~~

~~(C) **REPORTS AND PAYMENT OF TAX**. Within forty-five days after the close of each quarter in a calendar year, businesses in competition with public utilities shall file with the City Treasurer a report of its gross revenues derived from the sale and use of services and equipment which is in competition with the use of services and equipment provided by public utilities and taxed by the City. The report shall also contain a computation of the amount of the tax due the City. The business taxed pursuant to this ordinance shall be paid to the City Treasurer in the amount due at the same time the report is filed.~~

**SECTION IV. REPEALER.** Section 3 of Resolution 97-2 as it relates to the adoption of the Business License Fee Schedule is repealed. Beer and Liquor License fees shall remain in effect.

**SECTION V. EFFECTIVE DATE.** This ordinance shall become effective upon publication, but not later than January 1, 1998.

PASSED AND ADOPTED this 20th day of November, 1997.

Park City Municipal Corporation

______________________________

Bradley A. Olch, Mayor

Attestation by:

______________________________

Janet M. Scott, City Recorder

Approved as to Form:

______________________________

Mark D. Harrington, Deputy City Attorney

# Exhibit A

## PARK CITY BUSINESS LICENSE FEE STUDY

EXECUTIVE STUDY

NOVEMBER 17, 1998

PREPARED BY

ROSENTHAL AND ASSOCIATES

# INTRODUCTION AND EXECUTIVE SUMMARY

## INTRODUCTION

The state legislature enacted new legislation in 1997 which changes the way business license fees may be calculated and assessed. HB 98 and SB 96 limit business license fees to *cost recovery*. Fees now may be charged only for:

- The cost of regulation (an "administrative fee")
- The cost of providing an *enhanced service*
- Recovery of *disproportionate costs* attributable to the provision of service for a given class of businesses

The *administrative fee* is intended to recover the direct and indirect costs of operating the licensing system. The *service enhancement fee* is intended to offset the cost of providing an added service, or service at a level higher than the city standard. The fee for disproportionate costs is intended to offset added cost from difficult to serve business types. Fees for an enhanced service or for "disproportionate costs" must be calculated in a way estimated to be reasonably related to the benefit.

Park City has a long history of using business license revenue to support an enhanced service—provision of a municipal transit system. The city has not charged for "disproportionate costs" and, until now, has paid administrative costs through an interfund transfer from the Transportation Fund.

The new legislation the City has determined to re-structure its business license rates. This study summarizes analysis, decisions, criteria and conclusions which underlie calculation of the new rates.

## BACKGROUND

No other municipality in the state of Utah provides a free public transit system. Therefore, there is no basic service level provided to business, regarding public transit. Park City implemented a free public transit system at the request of the business community in the early 1980's and has operated it as a service enhancement for the benefit business, since that time.

Exclusive of grants, about 1/5 of the current cost of operating the transit system is funded by the business community through business licenses revenue. About 4/5's of the cost of the system is funded by other sources, primarily sales taxes. Initially, business license rates were set for each class of business to be generally proportionate to estimated benefit from the transit system. Since commencing transit service, business license revenues have been dedicated entirely to expenses associated with operating the transit system.

Over the years, as the local economy diversified, categories were added to the licensing system and fee rates were selectively modified, complicating the system and diluting the relationship between transit system benefit and licensing rates. So while the current system still retain its basic relationship to the enhanced service, changes to the local economy, shifts in transit usage and selective modifications to the fee structure suggest that it is time to revisit the original assumptions. This study is intended to re-establish and strengthen the relationship between transit system benefit and licensing rates. It summarizes analysis used to update the proportionate allocation of cost to each class of business and redefines licensing categories to formalize a simplified and more uniform method of assessment.

## BUSINESS LICENSE FEE SCHEDULE

The city has chosen to assess only administrative and service enhancement fees—an administrative fee to recover the cost of regulation and a service enhancement fee to cover a small part of the cost of operating the transit system. The administrative fee is charged as a flat rate, to each licensee. The service enhancement fee is charged as a variable rate, different for each class and size of business, so that the amount charged is proportionate and reasonably related to estimated benefit.

Proposed changes to the licensing system are *revenue neutral*—the total amount of money collected under the new system will be about the same as under the current system. However, for each business, fees charged under the new system *will be different* compared to the old system, because administrative costs are separately calculated and because of the updated "proportionate share analysis"—the current estimate of proportionate transit system benefit attributable to each class of business.

Proportionate share analysis is intended to account for *average impacts* represented by a class of businesses rather than a specific business entity. The new system includes fewer, more broadly defined licensing categories. Ridership information from the transit department, used to guide the analysis of benefit, suggests the breakdown of business categories and proportional share of benefit and cost shown in Figure 1.

*Figure 1*

| Business License Category | Benefit Share (Percent) | Share of Total Cost (Percent) |
|---|---|---|
| Ski Resort | 33 | 7.25 |
| Lodging | 18 | 3.96 |
| Restaurant / Retail | 30 | 6.53 |
| Office/Other | 16 | 3.47 |
| Miscellaneous | 3 | 0.64 |
| **Total** | **100** | **21.85** |

The *service enhancement fee* could be charged up to the full cost of operating the transit system. The city has elected to charge businesses less than this ***maximum fee*** amount because it has identified additional revenue sources to fund the transit system. The ***actual fee***, the reduced amount charged to businesses, is about 22 percent of the allowable maximum. The *Share of Total Cost* shown in Figure 1 is derived from the calculation of the total cost of the service enhancement illustrated in Figure 2.

*Figure 2*

**Business License Fee Analysis**

*Cost of Service Enhancement*

| | | Annual Total Cost | % of Total |
|---|---|---|---|
| Bus System Operations Expense (FY 1997) | | | |
| Fund 57 - Transportation & Parking | $2,201,686 | | |
| Less - Parking Customer Service | (36,747) | | |
| Less - Paid Parking Contract | (235,000) | | |
| Net Cost of Bus Operations | | $1,929,939 | |
| Capital Equipment - Depreciation | | $404,503 | |
| Estimated Collection Loss | | $10,000 | |
| Total Annual Cost | | $2,344,442 | |
| | | | |
| Components of Revenue | | | |
| Transit Sales Tax | | $850,970 | 36.30% |
| Resort Sales Tax | | 796,208 | 33.96% |
| Other (grants, charge for services, etc.) | | 185,119 | 7.90% |
| Business License Revenue | | 512,145 | 21.85% |
| Total Revenue | | $2,344,442 | |

The administrative and regulatory fee is based upon the cost to the City of establishing, implementing, administering and enforcing the business license system (Figure 3). Included in the total cost is the amortized cost of the computer and software system, administrative personnel, supervisory personnel, the consultant's enhanced service study, and enforcement. New businesses are charged an additional $15 to cover the cost of inspecting the business. This fee is not factored into the revenue calculation. Moderate additional costs for enforcement of the business license ordinance are included the calculation of the administrative fee.

*Figure 3*

| **Business License Fee Analysis**<br>*Administrative Expense* | Total Cost | Useful Life | Annual Cost |
|---|---|---|---|
| System Startup (amortized at 6%) | | | |
| Software | $20,000 | 5 | $4,748 |
| Hardware | 20,000 | 5 | 4,748 |
| Fee Study | 5,000 | 2 | 2,727 |
| Annual Operations | | | |
| Administrative Clerk (.5 FTE) | | | 18,250 |
| Enforcement/Review | | | 15,640 |
| Sub-Total Operations & Start-up | | | $46,113 |
| Indirect Costs (overhead) | | | 12,675 |
| Annual Total Administrative Expense | | | $58,788 |
| Cost per License | | | |
| Total Licenses (1996) | | | 1,278 |
| Cost per License | | | $46.00 |

While total business license revenue remains about the same, there are shifts among business categories. Figure 4 shows the average shift among categories. Ski resorts, lodging, restaurants and retail on average increased their share of total costs. Office and other businesses on average went down or stayed the same to reflect the results of the enhanced service analysis.

*Figure 4*

**Business License Fee Analysis**

*Change in Cost Allocation*

| Class | Current System | New System | % Change |
|---|---|---|---|
| Ski Resorts | $154,392 | $169,923 | 10% |
| Lodging | $87,033 | $92,876 | 7% |
| Restaurant/Retail | $146,207 | $153,136 | 5% |
| Office & Other | $105,869 | $81,372 | (23%) |
| Miscellaneous | $18,645 | $14,837 | (20%) |
| Total | $512,145 | $512,145 | |

## BUSINESS LICENSE FEE SCHEDULE

Business license fees, calculated as the sum of service enhancement fee and administrative fee, are the culmination of the study (Figure 5).

*Figure 5*

**Business License Fee Schedule**

| | Service Enhancement Fee | | Administrative Fee | |
|---|---|---|---|---|
| | Rate | Unit of Measure | Rate | Unit of Measure |
| Ski Resort | $4.40 | Uphill Capacity | $46.00 | Licensee |
| Lodging | $15.40 | Per Bedroom | $46.00 | Licensee |
| Restaurant /Retail | | | | |
| Restaurant | $0.185 | Per Sq. Ft. | $46.00 | Licensee |
| Outdoor Dining | $0.052 | Per Sq. Ft. | $46.00 | Licensee |
| Retail | $0.185 | Per Sq. Ft. | $46.00 | Licensee |
| Large Retail (greater than 12,000 sq. ft.) | $0.129 | Per Sq. Ft. | $46.00 | Licensee |
| Office/Other | | | | |
| Office, Service, Other | $0.165 | Per Sq. Ft. | $46.00 | Licensee |
| Warehouse | $0.047 | Per Sq. Ft. | $46.00 | Licensee |
| Resort and Amusement | $0.828 | Per User | $46.00 | Licensee |
| Miscellaneous | | | | |
| Taxies, Buses and Limousine Services | $30.00 | Per Vehicle | $46.00 | Licensee |
| Other Commercial Vehicles and Trailers | $6.00 | Per Vehicle | $46.00 | Licensee |
| Employee Based | $3.00 | Per Employee | $46.00 | Licensee |
| Commercial Vending, Game and Laundry Machines | $15.00 | Per Machine | $46.00 | Licensee |

Fee rates are rounded down.