Resolution No. 2026-23

RESOLUTION OF SUMMIT COUNTY COUNCIL REQUESTING THE UTAH LEGISLATURE RESPECT THE RIGHT TO LOCAL SELF-GOVERNMENT IN UTAH

WHEREAS, counties in Utah exist for the convenience of the people, to facilitate their right to self-government. In recent years, at the Utah Legislature, a contrary narrative has been circulating; that is, counties exist for the convenience of the State. It has been said that the county is a mere agent of the State, its principal. This is not consistent with our history, our Constitution, or our jurisprudence.

WHEREAS, Utah history is undeniably unique. In 1847, white colonizers arrived upon this, the ancestral land of indigenous Numic peoples – land also claimed by the Republic of Mexico. Those colonizers, a group of expatriating American citizens then-known as Mormons, immediately set up a system of self-government. After war and the Treaty of Guadalupe-Hildago, Mexico ceded its claim to the United States. The Mormons' application for statehood was rejected and, instead, this land became an unincorporated U.S. territory.

WHEREAS, because "the Congress of the United States [] failed to provide a form of civil government for the territory, the Mormons created their own, to operate "until the Congress of the United States shall otherwise provide . . . by admitting us into the Union."[1]

WHEREAS, as it turned out, the path to statehood was long, slow, and tumultuous. The President of the United States, James Buchanan, deployed the United States Army against the Mormons and tried to install an unelected governor of his own choosing. The United States Supreme Court upheld a series of punitive and discriminatory laws targeting Mormons. The United States Congress criminalized the Mormons' marriage practices, dissolved the corporation of the church, and confiscated church property. Federally appointed territorial governors were driven out and federally appointed judges ran away. For nearly half a century, the Mormons fought for their own system of "free and independent government" and took the position that federal law and the English common law did not apply here.

WHEREAS, Utah counties were important building blocks of that free and independent government. A system of county courts, sheriffs, recorders, surveyors, prosecuting attorneys, assessors, and clerks was established.[2] County boundaries were officially defined in 1852.

WHEREAS, after almost fifty (50) years of self-rule, each county sent delegates to a Constitutional Convention.[3] The Utah Constitution, passed by eligible voters on November 5, 1895, "recognized" ... "the several counties of the Territory of Utah, existing at the time of the

[1] Constitution of the State of Deseret, Preamble (1849).
[2] Acts, Resolutions and Memorials Passed at the Annual Sessions of the Legislative Assembly of the Territory of Utah.
[3] *Id*.

adoption of th[e] Constitution" ... "as "legal subdivisions of this State." UTAH CONST. art. II § 1 (1895).[4] Statehood was achieved on January 4, 1896.

WHEREAS, shortly thereafter, the Supreme Court of Utah, interpreting the new Utah Constitution, held that "the constitution implies a right of local self-government to each county." *State v. Standford,* 24 Utah 148, 66 P. 1061, 1062 (1901). This right is both "imposed and recognized" by the Utah Constitution and inures "to the people of each county." *Id.* In *Standford*, a county challenged a state statute that was "intended to apply . . . to certain particular counties to the exclusion of others," specifically *one county. Id*. at 1063. In invalidating the statute, the court held that "[t]he state legislature is forbidden to pass any private or special laws regulating county affairs." *Id.* at 1064.

WHEREAS, thereafter the Supreme Court of Utah stated that the "spirit of local self-government . . . permeated the framers of the [Utah] Constitution" and manifested "an intention to bring those through whom power is to be exercised as close as possible to the subjects upon which the power is to operate to preserve the right of local self-government to the people, and to restrict every encroachment upon such right." *State v. Eldredge,* 27 Utah 477, 76 P. 337, 340 (1904).

WHEREAS, in 1980, the justices said "*[T]he Constitution [of Utah] does not allow the Legislature unlimited discretion to deal with local government. The broad delegation of power by the Legislature to the Counties is consistent with constitutional provisions which establish counties as governmental entities and place certain aspects of county government beyond the power of the Legislature*." *State v. Hutchinson,* 624 P.2d 1116, 1122 (Utah 1980) (emphasis added). Counties have "constitutional status". *Id.*

WHEREAS, *Hutchinson* went on to affirm its language in *Standford,* where the Court found that, "The right of the Legislature was to provide for and put in action, not to run and operate, the machinery of the local government to the disfranchisement of the people." *Id*. at 1123. *Hutchinson* also affirmed the similar language in *Eldredge*, acknowledging that, "all our institutions were founded with a view to local self-government, and assume its continuance as one of the undoubted rights of the people." *Id.*

WHEREAS, part of the heritage of Utah is the belief that urban densities should be placed within municipal boundaries because municipal corporations are better equipped to provide municipal type services. This is embedded in Utah Code §17-79-802.

WHEREAS, zoning laws were first established in the State of Utah in 1925.[5] Such laws were found to be constitutional by the United States Supreme Court in *Euclid v. Ambler Realty*, 272 US 365 (1926) as a valid exercise of the police power. In 1991, the Utah Legislature enacted the County Land Use Development and Management Act ("CLUDMA") to guide local zoning decision-making. The ability of a County to make zoning decisions is "highly deferential." This is because land use regulations, including

[4] Later re-numbered to UTAH CONST. art. XI, § 1.
[5] *Marshall v. Salt Lake City*, 141 P.2d 704, 707 (Utah 1943).

"the enactment or amendment of zoning ordinances," are "fundamentally a legislative act," and as such, a reviewing court is to "avoid substituting its judgment for that of the legislative body. …" *Springdale Lodging, LLC v. Town of Springdale*, 2024 UT App 83, ¶26, 552 P.3d 222 (internal citations omitted).

WHEREAS, CLUDMA provides for broad public purposes, including the providing for the health, safety, and welfare; promoting the prosperity; improving the morals, peace, good order, comfort, convenience, and aesthetics of each county and each county's present and future inhabitants and businesses; protecting the tax base; securing economy in government expenditures; fostering the state's agricultural and other industries; protecting both urban and nonurban development; protecting and ensuring access to sunlight for solar energy devices; providing fundamental fairness in land use regulation; facilitating orderly growth, allowing growth in a variety of housing types, and contributing toward housing affordability; and protecting property values.[6]

WHEREAS, the enactment of zoning ordinances becomes a process of balancing the interests and rights of property owners. There is a recognition that uses and densities on one property may directly or indirectly impact another property. There must also be adequate municipal services to support any new development, including public utilities (water, sewer, electricity, natural gas, stormwater, and solid waste), fire protection, transportation infrastructure, and law enforcement. A comprehensive zoning scheme developed by a County, which includes a General Plan, land use regulations, and Zoning Map, inclusive of a state imposed affordable housing plan, allows for the consideration of community input (public hearings), community and cultural values, the orderly development of growth, legislative accountability (decisions by elected officials) and the adequate provision of municipal type services.

WHEREAS, in Summit County, there are multiple General Plans geared toward two distinct planning areas. These General Plans were the culmination of hundreds of public hearings and a two-year public process. The Eastern Summit County Planning District is a nonurban area designed to protect the small town character of that side of the County. The Snyderville Basin Planning District is a resort community with more urban type densities and sixteen (16) individual neighborhood plans. The General Plans were developed in conjunction with County property owners and citizens through an open, deliberative and transparent public process. In this way, the County ensures that laws are uniformly applied and that special purpose laws in violation of the Utah Constitution are not enacted to the disadvantage of this balancing of interests of all property owners.[7]

WHEREAS, Summit County has embarked upon an aggressive affordable housing plan using its grandfathered exclusory zoning powers the Utah Legislature generously granted in Utah Code §17-80-301(3). The County's public private partnership with Park City Junction, LLC and High Valley Transit District is an example of joint cooperation which is compliant with the Kimball Junction Neighborhood Plan,

[6] Utah Code §17-79-101.
[7] Utah Constitution, art. I, §24.

places densities in appropriate locations, and furthers the County's affordable housing goals.

WHEREAS, the Utah Legislature has seen the need for ensuring that new municipalities do not become failed political subdivisions by requiring robust feasibility studies to ensure adequate tax base and provision of municipal services, and requiring voter approval.[8]

WHEREAS, Preliminary Municipalities, Utah Code Title 10, Chapter 2a, Part 5, is contrary to the right of local self-government embodied within local control. Preliminary Municipalities are not full municipalities with all municipal powers. Rather, a Preliminary Municipality:

(a) may not impose a tax
(b) may not receive an allocation of sales tax or gas tax
(c) may not exercise eminent domain[9]

WHEREAS, while a Preliminary Municipality must have a feasibility study,[10] such feasibility studies have notoriously been incomplete and incompetent, not taking into account the true costs of the provision of municipal type services. The bonds posted by the sponsors of the Preliminary Municipality have been based upon these incompetent feasibility studies and are inadequate.[11] At no time is there a public vote as is required for typical municipal incorporation. If the Preliminary Municipality has not transitioned into a town within six (6) years, all of the costs and impacts of the Preliminary Municipality falls on the County.[12] While the statute provides for a private right of action for damages,[13] if the Preliminary Municipality fails, the initial landowners will in all probability be insolvent. The costs and impacts fall on County taxpayers, making taxpayers the personal bank for unsuccessful Land Developers. The Utah Legislature repealed the authorization for private land bonds (dirt bonds), which led to failures of various private banks, and which the Utah Legislature rightly recognized as bad public policy.

WHEREAS, a Preliminary Municipality, whose board consists of unelected nonresident landowners and representatives ("Land Developers"), appears to make the same mistake that was made with dirt bonds; only with far more troubling consequences. There is a reason that the general public looks at Preliminary Municipalities as simply special purpose legislation for Land Developers to enable them to ignore the balance which is the hallmark of comprehensive zoning in favor of self-dealing outside a transparent process and without the consideration of adequate municipal services. Land Developers are delegated unbidden legislative power to wield the police powers of the state in approving land use and zoning laws, but without accountability to the public.

[8] Utah Code Title 10, Chapter 2a, Section 2.
[9] Utah Code §10-2a-509(4).
[10] Utah Code §10-2a-504.
[11] Utah Code §10-2a-507(1)(h).
[12] Utah Code §10-2a-507(3)
[13] Utah Code §10-2a-507(3)(d).

Land Developers take jurisdiction of any public roads within the municipality and must maintain and repair those public roads, but without access to any public monies; thus setting up a failing maintenance regimen.[14] When these roads eventually are turned over to the County, they will be in substandard condition, leaving the expense of restoring the roads to County taxpayers.

WHEREAS, in Utah, we struggled for, and ultimately achieved, the right to local self-governance. The government that is closest to the people governs best. Our State leadership should re-commit to our heritage and values.

NOW, THEREFORE BE IT RESOLVED, by the County Council of Summit County, Utah, that we urge the Utah Legislature to repeal Utah Code Title 10, Chapter 2a, Part 5, Preliminary Municipalities.

PASSED, APPROVED AND ADOPTED this ___day of _____, 2026.

SUMMIT COUNTY COUNCIL

_____
Canice Harte
Chair

ATTEST:

_____
Malena Stevens
County Clerk

APPROVED AS TO FORM:

_____
David L. Thomas
Chief Deputy

[14] Utah Code §10-2a-509(6).