

PIUTE COUNTY
COUNTY PROPERTY
ACCEPTABLE USE POLICY

WHEREAS, on or about March 25, 2019 Governor Herbert signed HB 163; and

WHEREAS, on HB 163 comes into effect on July 1, 2019; and

WHEREAS, HB 163 makes it so if a county elected official, an appointed official, a judge, consultant, independent contractor, or employee, (collectively, public servant) uses public property in more than an incidental manner for personal use or use of another, they may meet the elements of having committed a felony under Utah Code 76-8-402; and

WHEREAS, a felony is “a serious crime punishable for more than one year or by death” Black’s Law Dictionary; and

WHEREAS, under Utah Code Title 76, a third degree felony is punishable by a term of imprisonment of not more than five years and \$5,000; and

WHEREAS, Utah Code 76-8-402 allows for a public servant to use public property in accordance with a written policy of the county; and

WHEREAS, the Piute County Commissioners believe that HB 163 as drafted makes it so public servants who are performing their duties in good faith may unwittingly be committing felonies; and

WHEREAS, the Piute County Commissioners desire to create guidelines that will ensure public servants are not at risk of unwitting committing felonies in their use of public property while ensuring public servants are using county property in a responsible manner; and

WHEREAS, the Piute County Commissioners believe the best way to accomplish this is to establish guidelines for use of Public Property, to create a mechanism for warning Public Servants if they are using the Public Property in a manner contrary to those guidelines, and only after continued use contrary to the guidelines after receiving a warning, are they considered to be misusing Public Property;

NOW, THEREFORE, the legislative body of Piute County hereby amends the Piute County Personnel Policy as follows:

"Public officer" means:

(a) an elected official of a public entity;

(b) an individual appointed to, or serving an unexpired term of, an elected official of a public entity;

(c) a judge of a court of record or not of record, including justice court judges; or

(d) a member of the Board of Pardons and Parole.

"Public servant" means:

(i) a public officer;

(ii) an appointed official, employee, consultant, or independent contractor of a public entity; or

(iii) a person hired or paid by a public entity to perform a government function.

Public servant includes a person described in Subsection (14)(a) upon the person's election, appointment, contracting, or other selection, regardless of whether the person has begun to officially occupy the position of a public servant.

"Public property" means real or personal property that is owned, held, or managed by a public entity.

"Public property" includes real or personal property that is owned, held, or managed by a public entity after the real or personal property is transferred by the public entity to an independent contractor of the public entity. "Public property" remains public property while in the possession of an independent contractor of a public entity for the purpose of providing a program or service for, or on behalf of, the public entity.

This COUNTY PROPERTY ACCEPTABLE USE POLICY constitutes a “written policy of the public servant’s entity” for purposes of Utah Code 76-8-402(1)(b)(iii).

Public Servants are authorized to use Public Property of Piute County for personal use.

Public Servants are ENCOURAGED to use Public Property of Piute County in a manner in accordance with these ENCOURAGED GUIDELINES:

- that does not damage the property;
- that does not cost the county more than incidental amounts, which may vary according to historic use, custom, and what is considered normal personal use of employer’s property in the community;
- that does not interfere with use of the property as intended for the public use; and
- that allows employees who have been authorized to use county equipment for extensive personal use to do so without fear of being prosecuted.

In addition to the foregoing, this County Property Acceptable Use Policy recognizes and acknowledges that the Piute County Commission may authorize certain public officers and public servants to use Public Property of Piute County solely for personal use as part of their compensation—e.g., a vehicle, electronics (PC’s, laptops, tablets, iPad, telephones) etc.

THEREFORE, if the Piute County Commission believes that a Public Servant is using Public Property in a manner contrary to the Encouraged Guidelines, the supervisor, County Attorney, or the Piute County Commissioners shall proceed as follows:

1. Give the public servant or public officer a verbal or a written statement that specifically informs the Public Servant that he or she should not use the Public Property in the manner identified and stated in the verbal or written statement.
2. If the alleged unauthorized use continues, after an initial verbal or written statement, the public servant or public officer shall be directed to appear before the Piute County Commission and, in Executive Session, the Piute County Commissioners shall set forth, in writing, the alleged unauthorized use of public property and provide the public officer or public servant with a final warning regarding the unauthorized use of public property.

3. If the public servant or public officer has (a) received an initial verbal or written statement regarding the alleged unauthorized use of public property, (b) appeared before the Piute County Commission and received a second or final warning and (c) continues the unauthorized use of public property, the public servant may be terminated from employment and the public officer, if appointed, may be subjected to disciplinary action , up to and including termination pursuant to the Piute County Personnel Policy; if elected, public officer will be asked to resign his or her public office or be subjected to Utah laws related to misfeasance and/or malfeasance of office.

The public servant or public officer may appeal the verbal or written statement to the Piute County Commissioners if they believe their use of Public Property is in accordance with Encouraged Guidelines. They must appeal the written statement by giving the appeal to the Piute County Clerk within one week of actual receipt of the written or verbal statement. The Piute County Commissioners shall, with reasonable diligence, hear the person who made the written or verbal statement, and the public servant or public official, and shall decide whether the use of the Public Property was in conformity with the Encouraged Guidelines and shall inform those involved.

If, and only if, within one year of receiving a written statement that was either upheld by the Piute County Commissioners, or was not appealed, the public servant or public officer uses Public Property in the same or in a substantially similar manner, and the unauthorized use is substantiated, there shall be a written finding of this (these) violations of the policy and that person shall be subjected to disciplinary action pursuant to the Piute County Personnel Policy.

If, and only if, the public servant or public officer (a) received an initial verbal or written statement alleging misuse of public property that was not appealed and if appealed, upheld, (b) receives a second statement alleging misuse of public property and appears before the County Commission and the allegation is upheld and (c) is subjected to disciplinary sanctions, up to and including termination, the public servant or public officer may appeal Piute County's action by filing suit in the Sixth Judicial District Court, in and for Piute County, State of Utah.

All county policies are hereby repealed and replaced to the limited extent that they contradict or interfere with this County Property Acceptable Use Policy, Federal contracts or laws, State contracts or laws, or contracts with third parties the County has entered into regarding the use of certain Public Property are not superseded by this COUNTY PROPERTY ACCEPTABLE USE POLICY.