

**ORDINANCE NO. 2012-03**

**AN ORDINANCE ENACTING AND CODIFYING TITLE 2A OF THE FRUIT HEIGHTS MUNICIPAL CODE REGARDING GOVERNMENT, INCLUDING PROVISIONS RELATED TO THE CITY COUNCIL, MAYOR, ELECTIONS, LEGISLATION, AND CONSTITUTIONAL TAKING ISSUES, AND REPEALING CHAPTER 5 OF THE EXISTING TITLE 1 OF THE FRUIT HEIGHTS MUNICIPAL CODE REGARDING SIMILAR PROVISIONS**

**WHEREAS**, the City Council has previously enacted code provisions regarding the Mayor and City Council as more particularly set forth in Chapter 5 of the Fruit Heights Municipal Code; and

**WHEREAS**, the City Council desires to enact and codify updated and revised code provisions regarding the City Council, Mayor, Elections, Legislation, and Constitutional Taking Issues, to be set forth in Title 2A of the Fruit Heights Municipal Code as more particularly set forth herein; and

**WHEREAS**, the City Council finds that the proposed revisions and updates to the Fruit Heights Municipal Code and the enactment and codification of Title 2A are in the best interest of the public to ensure that the City's ordinances are up to date and in compliance with applicable provisions of State law.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF FRUIT HEIGHTS CITY, STATE OF UTAH:**

**Section 1.** **Enactment and Codification.** Title 2A of the Fruit Heights Municipal Code regarding Government is hereby enacted and codified to read in its entirety as more particularly set forth in **Exhibit "A,"** attached hereto and incorporated herein by this reference.

**Section 2.** **Repealer.** Title 1, Chapter 5, of the Fruit Heights Municipal Code entitled Mayor and City Council is hereby repealed and replaced with the provisions of the new Title 2A as adopted herein.

**Section 3.** **General Repealer.** In addition to the specific ordinances repealed in accordance with Section 2, the enactment and codification of Title 2A shall be a repeal of all ordinances in conflict with the adopted and codified Ordinances, provided however, all ordinances in force prior to the adoption and codification shall continue in force after the adoption and codification for the purpose of all rights acquired, fines, penalties, forfeitures and liabilities incurred and actions therefor.

**Section 4. Severability Clause.** If any section, part or provision of this Ordinance is held invalid or unenforceable, such invalidity or unenforceability shall not affect any other portion of this Ordinance, and all provisions, clauses and words of this Ordinance shall be severable. This Section shall become effective without codification.

**Section 5. Effective Date.** This Ordinance shall become effective upon publication or posting, or twenty (20) days after adoption, whichever occurs first.

**PASSED AND ADOPTED BY THE CITY COUNCIL OF FRUIT HEIGHTS,  
STATE OF UTAH, ON THIS 6<sup>TH</sup> DAY OF MARCH, 2012.**

**FRUIT HEIGHTS CITY**

By:   
Mayor Todd Stevenson

**ATTEST:**

  
Brandon Green, City Recorder

Voting by the City Council:

	“AYE”	“NAY”
Councilmember Anderson	<u>  X  </u>	<u>          </u>
Councilmember Carroll	<u>  X  </u>	<u>          </u>
Councilmember Hill	<u>  X  </u>	<u>          </u>
Councilmember Hubrich	<u>  X  </u>	<u>          </u>
Councilmember Moss	<u>  X  </u>	<u>          </u>

**EXHIBIT "A"**

**TITLE 2A GOVERNMENT**

**TITLE 2A**  
**GOVERNMENT**

<b>CHAPTER 2A-01.</b>	<b>CITY COUNCIL</b>
<b>CHAPTER 2A-02.</b>	<b>MAYOR</b>
<b>CHAPTER 2A-03.</b>	<b>ELECTION AND QUALIFICATION</b>
<b>CHAPTER 2A-04.</b>	<b>LEGISLATION</b>
<b>CHAPTER 2A-05.</b>	<b>CONSTITUTIONAL TAKING ISSUES</b>

**CHAPTER 2A-01. CITY COUNCIL**

<b>2A-01-010.</b>	<b>Governing Body.</b>
<b>2A-01-020.</b>	<b>Powers and Duties.</b>
<b>2A-01-030.</b>	<b>Meetings.</b>
<b>2A-01-040.</b>	<b>Open Meetings Law.</b>
<b>2A-01-050.</b>	<b>Notice of Meetings.</b>
<b>2A-01-060.</b>	<b>Agenda.</b>
<b>2A-01-070.</b>	<b>Minutes and Recordings.</b>
<b>2A-01-080.</b>	<b>Mayor Presides.</b>
<b>2A-01-090.</b>	<b>Quorum.</b>
<b>2A-01-100.</b>	<b>Voting.</b>
<b>2A-01-110.</b>	<b>Reconsideration.</b>
<b>2A-01-120.</b>	<b>Rules of Procedure.</b>
<b>2A-01-130.</b>	<b>Attendance.</b>
<b>2A-01-140.</b>	<b>Disorderly Conduct.</b>
<b>2A-01-150.</b>	<b>Required Attendance of Witnesses and Production of Evidence.</b>
<b>2A-01-160.</b>	<b>Electronic Meetings.</b>
<b>2A-01-170.</b>	<b>Utah Retirement System.</b>

**2A-01-010. Governing Body.**

The governing body of Fruit Heights City shall be a six-member council form of government consisting of six (6) members, one of whom shall be the Mayor and five (5) of whom shall be Council Members, which council is hereinafter referred to as the "City Council."

**2A-01-020. Powers and Duties.**

The City Council is the legislative body of the City and shall exercise the legislative powers and perform the legislative duties and functions of the City and may perform such other functions as may be specifically provided or necessarily implied by law. The City Council may also exercise any executive or administrative power and perform or supervise the performance of any executive or administrative duty or function that has not been given to the Mayor in accordance with and subject to the provisions set forth in *Utah Code Ann. § 10-3b-303*, as amended.

**2A-01-030. Meetings.**

(a) **Regular Meetings.** The City Council shall hold regular meetings to conduct the business of the City at least once each month and shall prescribe by ordinance the time and place for holding its regular meetings. In general, regular meetings of the City Council are held on the first and third Tuesdays of each month at the offices of Fruit Heights City, 910 S. Mountain Road, Fruit Heights, Utah, which

meetings shall begin at approximately 7:00 p.m. The City Council shall prepare and provide notice of its annual meeting schedule in accordance with Section 2A-01-050.

(b) **Special Meetings.** If at any time the business of the City requires a special meeting of the City Council, such a special meeting may be ordered by the Mayor or any two Council Members. Notice of the special meeting shall be provided in accordance with the provisions of the Utah Open and Public Meetings Act and *Utah Code Ann.* § 10-3-502, as amended. The order of the special meeting shall be entered into the minutes of the City Council.

(c) **Closed Meetings.** The affirmative vote of at least two-thirds of the City Council present at an open meeting for which notice is given and a quorum is present may call a closed meeting to discuss certain items as provided under *Utah Code Ann.* § 52-4-205, as amended. The reason or reasons for holding a closed meeting and the vote, by name, of each member of the City Council, either for or against the motion to hold the closed meeting, shall be entered on the minutes of the meeting. No ordinance, resolution, rule, regulation, contract, or appointment shall be approved at a closed meeting.

(d) **Electronic Meetings.** The City Council may convene and conduct an electronic meeting in accordance with the provisions of *Utah Code Ann.* § 52-4-207, as amended, and Section 2A-01-160 of the Fruit Heights City Code.

**2A-01-040. Open Meetings Law.**

All meetings of the City Council shall be open to the public, except closed meetings, and shall be conducted in accordance with the Open and Public Meetings Act as set forth in *Utah Code Ann.* §§ 52-4-101, *et seq.*, as amended.

**2A-01-050. Notice of Meetings.**

The City shall give public notice at least once each year of its annual meeting schedule and shall give not less than twenty-four (24) hours' public notice of the agenda, date, time and place of each of its meetings, other than emergency meetings, in accordance with *Utah Code Ann.* § 52-4-202, as amended, and *Utah Code Ann.* § 63F-1-701, as amended, regarding postings on the Utah Public Notice Website.

**2A-01-060. Agenda.**

A written agenda for each regular meeting shall be prepared by the City Manager or his or her designee and approved by the Mayor or Mayor pro tempore in his or her absence. Each agenda shall provide reasonable specificity to notify the public as to the topics to be considered at the public meeting and topics discussed at the meeting shall comply with applicable provisions of *Utah Code Ann.* § 52-4-202, as amended.

**2A-01-070. Minutes and Recordings.**

Except as otherwise provided by law, written minutes and a recording shall be kept of all meetings of the City Council in accordance with the provisions set forth in *Utah Code Ann.* §§ 52-4-203 and -206, as amended. The City Council shall establish and implement procedures for approval of written minutes of its meetings.

**2A-01-080. Mayor Presides.**

The Mayor shall be the chairperson and preside at the meetings of the City Council. In the absence of the Mayor or because of his or her inability or refusal to act, the City Council may elect a member of the City Council to preside over the meeting as Mayor pro tempore in accordance with the procedures set forth in Chapter 2 of this Title.

**2A-01-090. Quorum.**

No action of the City Council shall be official or of any effect except when a quorum of the Council Members are present, provided, that fewer than a quorum may adjourn a meeting. The number of Council Members necessary to constitute a quorum is three (3), excluding the Mayor.

**2A-01-100. Voting.**

(a) How Taken. A roll call vote shall be taken and recorded for all ordinances, resolutions, and any action which would create a liability against the City and in any other case at the request of any member of the City Council by a "yes" or a "no" vote. Every resolution or ordinance shall be in writing before the vote is taken.

(b) Number Required. The minimum number of "yes" votes required to pass any ordinance, resolution, or to take any action by the City Council, unless otherwise prescribed by law, shall be a majority of the voting members of the City Council, without considering any vacancy in the City Council. Any ordinance, resolution, or motion of the City Council having fewer favorable votes than required herein shall be deemed defeated and invalid. Notwithstanding the foregoing, a council meeting may be adjourned by a majority vote of the Council even though the majority is less than required herein, and a majority of the Council Members, regardless of number, may fill any vacancy in the Council as provided in *Utah Code Ann.* § 20A-1-510, as amended.

(c) Mayor Voting. Except as provided herein, the Mayor is a nonvoting member of the City Council. The Mayor may vote as a voting member of the Council on each matter for which there is a tie vote of the other Council Members, when the City Council is voting on whether to appoint or dismiss the City Manager, or as otherwise provided by law, as more particularly discussed in Chapter 2 of this Title.

**2A-01-110. Reconsideration.**

Any action taken by the City Council shall not be reconsidered or rescinded at any special meeting unless the number of members of the City Council present at the special meeting is equal to or greater than the number of members present at the meeting when the action was approved.

**2A-01-120. Rules of Order and Procedure.**

Pursuant to *Utah Code Ann.* § 10-3-606, as amended, the City Council hereby adopts the following rules of order and procedure governing public meetings of the City Council ("Rules of Order and Procedure"). All public meetings of the City Council shall be conducted in accordance with the Rules of Order and Procedure. The Rules of Order and Procedure shall be made available to the public at each public meeting of the City Council and on the City's website.

(a) Parliamentary Order and Procedure. The City Council's meetings shall be conducted in general accordance with *Robert's Rules of Order*. The City Council may adopt by resolution additional rules of order and procedure for the proper conduct of its meetings.

(b) Ethical Behavior. Members of the City Council are elected officers within the meaning of the Utah Municipal Officers' and Employees' Ethics Act, as set forth in *Utah Code Ann.* §§ 10-3-1301, *et seq.*, as amended. City Council members shall comply with the provisions of the Ethics Act in all matters pertaining to the City and in public meetings of the City Council.

(c) Civil Discourse. Remarks and comments made in public meetings of the City Council should be relevant to the matters before the City Council. Speakers should speak in an audible and clear tone and refrain from attacking City Council members or others or their motives. City Council meetings should be conducted in a courteous manner to promote an atmosphere in which all points of view may be expressed and heard. Council members should not interrupt other members during discussion and

debate. Remarks should be addressed through the Mayor who shall allow reasonable opportunity for all points of view to be expressed.

**2A-01-130. Attendance.**

The City Council shall have the power to compel the attendance of its own members at its meetings and to provide penalties it considers necessary for the failure to comply with an exercise of authority to compel attendance.

**2A-01-140. Disorderly Conduct.**

The City Council on a two-thirds vote of its members may expel any person who is disorderly and/or disruptive during the meeting of the City Council. The City Council may also on a two-thirds vote of its members expel or fine any member for disorderly and/or disruptive conduct. This Section or any action taken by the governing body pursuant hereto shall not preclude prosecution under any other provision of law.

**2A-01-150. Required Attendance of Witnesses and Production of Evidence.**

The City Council may require the attendance of any person to give testimony or produce records, documents or things for inspection, copying or examination necessary or useful for the governance of the City. The City Council may issue subpoenas in its own name in the manner provided in the Utah Rules of Civil Procedure or may by ordinance establish its own procedure for issuing subpoenas under this Section.

**2A-01-160. Electronic Meetings.**

(a) Purpose. The purpose of this Section is to establish written procedures governing electronic meetings in accordance with *Utah Code Ann.* § 52-4-207, as amended, permitting a public meeting held by the City Council to be convened or conducted by means of a conference using electronic communications.

(b) Definitions. As used in this Section, the following terms shall have the meaning set forth as follows:

(1) "Anchor location" means the physical location from which the electronic meeting originates or from which the participants are connected.

(2) "Electronic meeting" means a meeting of a public body convened or conducted by means of a conference using electronic communications.

(3) "Participate" means the ability to communicate with all of the members of a public body, either verbally or electronically, so that each member of the public body can hear or observe the communications.

(4) "Public body" means the Fruit Heights City Council.

(5) "Public hearing" means a portion of a meeting at which comments from the public will be accepted.

(6) "Public statement" means a statement made in the ordinary course of business of the public body with the intent that all other members of the public body receive it.

(c) Notice. The public body may, by following the procedures and requirements of this Section, convene and conduct an electronic meeting. The public body convening or conducting an electronic meeting shall:

- (1) Give public notice of the meeting in accordance with *Utah Code Ann. § 52-4-202*, as amended, and other applicable provisions of the Utah State Code;
- (2) Post written notice at the anchor location;
- (3) Provide notice of the electronic meeting to the members of the public body at least 24 hours before the meeting so that they may participate in and be counted as present for all purposes, including the determination that a quorum is present; and
- (4) Provide a description of how the members will be connected to the electronic meeting.

(d) **Emergency Meeting.** Pursuant to *Utah Code Ann. § 52-4-202(5)*, as amended, certain noticing requirements may be disregarded if because of unforeseen circumstances it is necessary for a public body to hold an emergency meeting to consider matters of an emergency or urgent nature. In the event of an emergency meeting, the public body shall comply with the requirements of *Utah Code Ann. § 52-4-202(5)*, as amended.

(e) **Location.** The Fruit Heights City Offices, located at 910 S. Mountain Road, Fruit Heights, Utah, 84037, shall be considered the anchor location for purposes of this Section. Space and facilities shall be provided at the anchor location so that interested persons and the public may attend and monitor the open portions of the meeting. If the meeting is a public hearing, space and facilities shall be provided at the anchor location so that interested persons and the public may attend, monitor and participate in the open portions of the meeting.

(f) **Procedures Governing Electronic Meeting.** The procedures to be followed at the electronic meeting shall be the same as those followed by the public body in a non-electronic open and public meeting of the public body. The meeting shall be held pursuant to the agenda posted for that meeting. Prior to commencing the electronic meeting, an electronic link shall be established with all participants and the anchor location. The Mayor shall confirm that the non-present members are connected via electronic means. Minutes shall be kept for the meeting in accordance with the requirements of the Open Meetings Law. If voting is required for any action, a roll call vote shall be taken so that the non-present member(s) vote may be counted and heard. Following passage of a motion to adjourn, the electronic link shall be terminated and the meeting shall be deemed concluded.

(g) **Participation.** All interested parties shall be able to either hear public statements made by all members of the public body participating in the meeting, or be able to view and hear all members participating in the meeting. In addition, all interested parties shall be able to participate in a public hearing by having their voices or their voices and images conveyed live to all members of the public body. Care should be taken to ensure that participants verbalize their statements and responses so that non-present members may hear them. In addition, any and all visual aids and written material not available to the non-participating members should be verbally described. Nothing in this policy may be construed to interfere with accommodations made under the Americans with Disabilities Act.

(h) **Statement.** Each agenda for an electronic meeting should include the following statement:

*Meetings of the Fruit Heights City Council may be conducted via electronic means pursuant to Utah Code Ann. § 52-4-207, as amended. In such circumstances, contact will be established and maintained via electronic means and the meeting will be conducted pursuant to the Electronic Meetings Policy established by the City Council for electronic meetings.*

#### **2A-01-170. Utah Retirement System.**

For purposes of determining eligibility under the Utah Retirement System and provisions of the Utah State Retirement and Insurance Benefit Act, as set forth in Title 49 of the *Utah Code*, the City hereby

certifies that all elected official positions of the City are part-time. Unless otherwise provided by law, any elected official taking office for the first time on or after July 1, 2011, shall not be eligible for participation in the Utah Retirement System.

**CHAPTER 2A-02. MAYOR**

- 2A-02-010. General Powers.**
- 2A-02-020. Administrative Powers.**
- 2A-02-030. Presiding Officer.**
- 2A-02-040. Voting Authority.**
- 2A-02-050. Veto Authority.**
- 2A-02-060. Mayor Pro Tem.**
- 2A-02-070. Restrictions.**

**2A-02-010. General Powers.**

The Mayor shall have such duties as set forth in *Utah Code Ann.* § 10-3b-104, as amended, and such additional duties, powers and responsibilities as the City Council may, by ordinance, resolution or directive, prescribe to the extent permitted by law. Any change in the powers and duties of the Mayor shall comply with applicable provisions of *Utah Code Ann.* § 10-3b-303, as amended.

**2A-02-020. Administrative Powers.**

The ceremonial functions and administrative powers, authority, and duties of Fruit Heights City are vested in and/or delegated to the Mayor, except as otherwise delegated to the City Manager. The Mayor is the chief executive officer of the City to whom the City Manager reports. All other employees shall report to the City Manager.

**2A-02-030. Presiding Officer.**

The Mayor shall be the chair of the Council and preside at the meetings of the City Council.

**2A-02-040. Voting Authority.**

Except as otherwise provided herein, the Mayor is a nonvoting member of the Council. The Mayor shall vote as a voting member of the Council: (1) on each matter for which there is a tie vote of the other Council members present at the meeting; (2) when the Council is voting on whether to appoint or dismiss the City Manager; (3) when the Council is voting on an ordinance that enlarges or restricts the Mayor's power, duties or function; and (4) as otherwise provided by law.

**2A-02-050. Veto Authority.**

The Mayor shall have no power to veto any ordinance, tax levy, appropriation, or act of the City Council.

**2A-02-060. Mayor Pro Tem.**

In the absence of the Mayor or because of his or her inability or refusal to act, the City Council may elect a member of the City Council to preside over the meeting as Mayor pro tempore. The Mayor pro tempore shall preside at the Council meeting and perform, during the Mayor's absence, disability or refusal to act, the duties and functions of the Mayor. The election of a Mayor pro tempore shall be entered in the minutes of the City Council meeting at which he or she is elected. Any member of the City Council elected as Mayor pro tempore shall still retain his or her power and authority as a member of the Council and shall be entitled to vote as a member of the City Council on all matters.

**2A-02-070. Restrictions.**

The Mayor may not serve as the City Recorder or the City Treasurer.

## CHAPTER 2A-03. ELECTION AND QUALIFICATION

- 2A-03-010. Elections.
- 2A-03-020. Nomination by Convention.
- 2A-03-030. Certificate of Nomination.
- 2A-03-040. Residency and Registered Voter Requirements.
- 2A-03-045. Maintaining Residency.
- 2A-03-050. Term of Office.
- 2A-03-060. Vacancies.
- 2A-03-070. Oath of Office.
- 2A-03-080. Bond.
- 2A-03-090. Salaries.
- 2A-03-100. Transfer of Records.
- 2A-03-110. Campaign Finance Statement.
- 2A-03-120. Ethics Act.
- 2A-03-130. Political Activities.

### 2A-03-010. Elections.

Consistent with the provisions of *Utah Code Ann.* § 20A-1-202, as amended, the offices of Mayor and Council Member shall be filled by election of the registered voters of Fruit Heights City in an at-large municipal election held on the Tuesday after the first Monday in November in odd-numbered years. Municipal elections for the offices of Mayor or Council Member shall be conducted in the manner provided in the Utah Election Code, set forth in Title 20A of the *Utah Code Annotated*, and applicable provisions of *Utah Code Ann.* §§ 10-3-201, *et seq.*, as amended.

### 2A-03-020. Nomination by Convention.

Pursuant to authority set forth in *Utah Code Ann.* § 20A-9-404, as amended, and as a continuation of ordinances previously adopted by the City, the City has adopted the convention and committee system for nominating candidates for municipal office. Under such procedures, the City exempts itself from primary elections and designates that candidates for municipal office shall be nominated by political party convention or committee in accordance with the procedures set forth in Subsection 20A-9-404(3), as amended.

### 2A-03-030. Certificate of Nomination.

A certificate of nomination for each person nominated by convention or committee shall be prepared by the convention or committee in accordance with the requirements of Subsection 20A-9-404(3), as amended, and shall be filed with the City Recorder not later than the sixth Tuesday before the November municipal election.

### 2A-03-040. Residency and Registered Voter Requirements.

Persons eligible to be nominated for the elected office of Mayor or Council Member shall be a registered voter of Fruit Heights, and shall meet the residency and filing requirements of *Utah Code Ann.* § 20A-9-203, as amended.

### 2A-03-045. Maintaining Residency.

Pursuant to *Utah Code Ann.* § 10-3-301, as amended, each person elected to the office of Mayor or Council Member shall maintain residency within the boundaries of the City during his or her term of office. If a person elected to the office of Mayor or Council Member establishes his or her principal place of residence outside the municipality during his or her term of office, the office is automatically vacant. If a person elected to the office of Mayor or Council Member is absent from the City anytime during his or her

term of office for a continuous period of more than sixty (60) days without the consent of the City Council, that person's elected office is automatically vacant.

**2A-03-050. Term of Office.**

Persons elected to the office of Mayor or Council Member shall begin their term of office at 12 o'clock noon on the first Monday in January following their election, and shall continue in office for four (4) years thereafter and until their respective successors are chosen and qualified, except in case of death, resignation, removal, or disqualification from office.

**2A-03-060. Vacancies.**

Vacancies in the offices of Mayor or Council Member shall be filled in accordance with the provisions of *Utah Code Ann.* § 20A-1-510, as amended.

**2A-03-070. Oath of Office.**

(a) Required. All elected officials shall take, subscribe and file the Constitutional oath of office before entering upon the duties of their respective offices. Elected officials shall take their oath of office at 12:00 noon on the first Monday in January following their election or as soon thereafter as is practical.

(b) Administered. The oath of office shall be administered by the City Recorder, any judge, or any notary public.

(c) Filed. All oaths of office shall be filed with the City Recorder.

(d) Failure to Comply. No official act of any officer shall be invalid for the reason that he or she failed to take the oath of office.

**2A-03-080. Bond.**

(a) Required. Elected officers of the City before taking office shall execute a bond with good and sufficient sureties payable to the City or shall be included within public employee blanket bonds, in the amount of not less than \$10,000, conditioned for the faithful performance of the duties of the respective officers and the payment of all monies received by such officer according to the law and the ordinances of Fruit Heights City.

(b) Approval. The bonds of Council Members shall be approved by the Mayor, and the bond of the Mayor shall be approved by the City Council, at the first meeting of the City Council in January following a municipal election. All bonds of elected officers shall be filed with the City Recorder.

(c) Premium Charge. The premium charge by a corporate surety for any bond required herein shall be paid by Fruit Heights City.

(d) Additional Bonds. The City Council may at any time require further and additional bonds of any elected officers of the City.

**2A-03-090. Salaries.**

Elected officers shall receive such compensation for their services as the City Council may fix or amend by ordinance in accordance with the notice and hearing requirements set forth in *Utah Code Ann.* § 10-3-818, as amended.

**2A-03-100. Transfer of Records.**

Every officer of the City upon expiration of his or her term for any cause whatsoever shall deliver to the City Recorder all books, records, keys, and property of the City.

**2A-03-110. Campaign Finance Statement.**

(a) Definitions. For purposes of this Section, the following words shall have the meanings set forth.

(1) Contribution. "Contribution" means all monies, in-kind contributions, and contributions of tangible things given to the candidate or to the organization(s) representing the candidate, for the purpose of enhancing the candidate's campaign.

(2) Expenditure. "Expenditure" means the monetary, in-kind payment, or payment of tangible things to any person or entity, by the candidate's campaign.

(3) Reporting Date. "Reporting date" means ten (10) days before a municipal general election (for a Campaign Finance Statement required to be filed no later than seven (7) days before a municipal general election) and the day of filing (for a Campaign Finance Statement required to be filed no later than thirty (30) days after a municipal general election).

(4) Reporting Limit. "Reporting limit" means any contribution or expenditure in an amount equal to \$50 or more.

(b) Statement Required. Each candidate for municipal office shall file with the City Recorder a Campaign Finance Statement disclosing his or her itemized and total campaign contributions and expenditures in accordance with the procedures and requirements set forth herein and in *Utah Code Ann. § 10-3-208*, as amended.

(c) Time for Filing. Each candidate for municipal office who is nominated by convention or committee in accordance with applicable City Ordinances and State law shall file with the City Recorder a Campaign Finance Statement no later than seven (7) days before the date of the municipal general election, and another Campaign Finance Statement no later than thirty (30) days after the date of the municipal general election. A Campaign Finance Statement required under this Section is considered filed if it is received in the City Recorder's Office by 5:00 p.m. on the date that it is due.

(d) Campaign Finance Statement. Each Campaign Finance Statement shall comply with and contain the information required in *Utah Code Ann. § 10-3-208(b)*, as amended.

(e) Notice to Candidates. The City Recorder shall, at the time a candidate for municipal office files a declaration of candidacy with the City and again fourteen (14) days before each municipal general election, notify the candidate in writing of:

(1) The provisions of State statutes and City ordinances governing the disclosure of campaign contributions and expenditures;

(2) The dates when the candidate's Campaign Finance Statement is required to be filed; and

(3) The penalties that apply for failure to file a timely Campaign Finance Statement, including the statutory provisions that require removal of the candidate's name from the ballot for failure to file the required Campaign Finance Statement when required.

(f) Failure to File. Except as provided in Subsection (g), if a candidate fails to file a Campaign Finance Statement in accordance with the provisions of this Section and applicable provisions of State law,

the City Recorder shall inform the appropriate election official who shall, if practical, remove the candidate's name from the ballot; or if removing the candidate's name from the ballot is not practicable, inform the voters by any practicable method that the candidate has been disqualified and that the votes cast for the candidate will not be counted.

(g) Inadvertent Omissions. Notwithstanding Subsection (f), a candidate who timely files a Campaign Finance Statement before a municipal general election is not disqualified if: (1) the statement details accurately and completely the information required herein, except for inadvertent omissions or insignificant errors or inaccuracies; and (2) the omissions, errors, or inaccuracies are corrected in an amended report or in the next scheduled report.

(h) Public Records. Financial disclosure reports filed pursuant to this Section are considered public documents open to inspection in accordance with *Utah Code Ann.* § 10-3-208, as amended, and the Utah Government Records Access and Management Act, as amended. The City Recorder shall make each Campaign Finance Statement filed by a candidate available for public inspection and copying and post an electronic copy of the same in accordance with applicable provisions of *Utah Code Ann.* § 10-3-208(5), as amended.

**2A-03-120. Ethics Act.**

All elected officers shall comply with the provisions, conditions and requirements of the Municipal Officers' and Employees' Ethics Act as set forth in *Utah Code Ann.* § 10-3-1301, *et seq.*, as amended.

**2A-03-130. Political Activities.**

(a) Officers. Municipal officers shall comply with and be subject to the political activities provisions of *Utah Code Ann.* § 10-3-1108, as amended.

(b) City. The City shall comply with the terms and conditions of the political activities provisions of *Utah Code Ann.* § 10-3-1108, as amended. Pursuant to the Political Activities of Public Entities Act, as set forth in *Utah Code Ann.* § 20A-11-1201, *et seq.*, as amended, unless specifically required by law, the City may not make expenditures from public funds for political purposes or to influence a ballot proposition.

## **CHAPTER 2A-04. LEGISLATION**

- 2A-04-010. Ordinances.**
- 2A-04-020. Resolutions.**
- 2A-04-030. Public Records.**

### **2A-04-010. Ordinances.**

(a) **Legislative Power.** Except as otherwise specifically provided, the City Council shall exercise its legislative powers through ordinances.

(b) **Extent of Power.** The City Council may pass any ordinance to regulate, require, prohibit, govern, control or supervise any activity, business, conduct or condition authorized by law.

(c) **Form.** Any ordinance passed by the City Council shall contain and be in substantially the order and form as set forth in *Utah Code Ann. § 10-3-704*, as amended. No ordinance shall be void or unlawful by reason of its failure to conform to certain provisions of said law.

(d) **Effective Date.** Unless otherwise provided in the ordinance, ordinances shall become effective twenty (20) days after publication or posting, or thirty (30) days after final passage by the City Council, whichever is sooner. Ordinances may become effective at an earlier or later date after publication or posting if so provided in the ordinance.

(e) **Signed.** Ordinances passed or enacted by the City Council, before taking effect, shall be signed by the Mayor, or if he or she is absent, by the Mayor pro tempore or by a quorum of the Council Members as required by law.

(f) **Publication.** Except as otherwise provided by law, all ordinances, before taking effect, shall be posted or published in accordance with applicable provisions of *Utah Code Ann. § 10-3-711*, as amended.

(g) **Recording.** The City Recorder shall record, in a book used exclusively for that purpose, all ordinances passed by the City Council. The City Recorder shall give each ordinance a number, if the City Council has not already done so. The City Recorder shall make or cause to be made a certificate stating the date of passage and the date of publication or posting of the ordinance, as required. All ordinances shall be recorded as provided herein before taking effect.

(h) **Prima Facia Evidence.** The record and certificate prepared by the City Recorder, or a certified copy thereof, shall be prima facie evidence of the contents, passage, and publication or posting of the ordinance or codification. In addition, the ordinances printed and published by the authority of the City Council, shall be prima facie evidence of the contents, passage, and legal publication of such ordinances, as of the dates mentioned in the publication in all courts and administrative proceedings.

(i) **Proved Under Seal.** The contents of all Fruit Heights City ordinances, the dates of passage, and the dates of publication or posting, may be proved by the certification of the City Recorder under the seal of Fruit Heights City.

### **2A-04-020. Resolutions.**

(a) **Administrative Powers.** Unless otherwise required by law, the City Council may exercise all administrative powers by resolution.

(b) Form. Any resolution passed by the City Council shall be in a form and contain sections substantially similar to that prescribed for ordinances.

(c) Effective Date. Resolutions may take effect on passage or at a later date as the City Council may determine, but resolutions may not become effective more than three (3) months from the date of passage.

(d) Publication. Resolutions may become effective without publication or posting.

(e) Limitation. No punishment, fine, or forfeiture may be imposed by resolution.

**2A-04-030. Public Records.**

The ordinances, resolutions, and any other books, records, accounts or documents of the City shall be kept at the office of the City Recorder. Approved copies shall be open and available to the public during regular business hours for examination and copying in accordance with the Utah Government Records Access and Management Act.

**CHAPTER 2A-05. CONSTITUTIONAL TAKING ISSUES**

- 2A-05-010. Purpose and Intent.**
- 2A-05-020. Constitutional Taking.**
- 2A-05-030. Guidelines and Procedures for Review.**
- 2A-05-040. Limitations.**

**2A-05-010. Purpose and Intent.**

The purpose of this Chapter is to provide advisory guidelines to assist the City in identifying and reviewing actions of the City which may involve the physical taking or exaction of private real property that may have Constitutional taking issues in accordance with the advisory provisions of *Utah Code Ann. §§ 63L-4-101, et seq.* This Chapter does not apply when the City formally exercises its power of eminent domain.

**2A-05-020. Constitutional Taking.**

(a) As used herein "Constitutional taking issues" means actions involving the physical taking or exaction of private real property by the City that might require compensation to a private real property owner because of:

- (1) the Fifth or Fourteenth Amendment of the Constitution of the United States;
- (2) Article I, Section 22 of the Utah Constitution; or
- (3) any recent court rulings governing the physical taking or exaction of private real property by a governmental entity.

(b) Actions by the City involving the physical taking or exaction of private real property is not a Constitutional taking if the physical taking or exaction:

- (1) bears an essential nexus to a legitimate governmental interest; and
- (2) is roughly proportionate and reasonably related, on an individualized property basis, both in nature and extent, to the impact of the proposed development on the legitimate government interest.

**2A-05-030. Guidelines and Procedures for Review.**

Any owner of private real property who claims there has been a Constitutional taking of the owner's private real property by the City shall request a review of the final decision of any official, employee, board, commission or council of the City implicating such Constitutional taking. The following guidelines and procedures shall be followed in the event such review is requested.

(a) **Final Decision.** The person requesting a review must have obtained a final and authoritative determination, internally, within the City, relative to the decision from which they are requesting review.

(b) **Time for Filing.** The person requesting a review shall file his or her request in writing to the office of City Recorder within thirty (30) days from the date of the final decision that gave rise to the concern that a Constitutional taking has occurred.

(c) **Date for Review.** The City Council or its designee shall immediately set a time to review the decision that gave rise to the Constitutional taking claim.

(d) **Additional Information.** In addition to the written request for review, the applicant shall submit prior to the date of review the following information. An application shall not be deemed "complete" or "submitted" until the reviewing body certifies to the applicant that all the materials and information required herein has been received. The reviewing body shall promptly notify the applicant of an incomplete application.

- (1) name of the applicant requesting review;
- (2) name and business address of current owner of the property, form of ownership, and name and address of all principal shareholders or partners if a business entity is involved;
- (3) a detailed description of the grounds for the claim that there has been a Constitutional taking;
- (4) a detailed description of the property alleged to have been taken;
- (5) evidence and documentation as to the value of the property alleged to have been taken, including any evidence of the value of the property before and after the alleged taking, the name of the party from whom the property was purchased and the relationship if any between the person requesting review and the party from whom the property was acquired;
- (6) the nature of the protectable interest claimed to be affected, such as, but not limited to, fee simple ownership, leasehold, etc.;
- (7) terms (including sale price) of any previous purchase or sale of a full or partial interest in the property in the three (3) years prior to the date of application;
- (8) all appraisals of the property prepared for any purpose, including financing, offering for sale, or ad valorem taxation, within the three (3) years prior to the date of application;
- (9) the assessed value of and the ad valorem taxes on the property for the previous three (3) years;
- (10) all information concerning current mortgages or other loans secured by the property, including name of the mortgagee or lender, current interest rate, remaining loan balance and term of loan and other significant provisions, including but not limited to, right of purchasers to assume the loan;
- (11) all listings of the property for sale or rent, price asked and offers received, if any, within the previous three (3) years;
- (12) all studies commissioned by the applicant within the previous three (3) years concerning feasibility of development or utilization of the property;
- (13) itemized income and expense statements from the property for the previous three (3) years for income producing property;
- (14) information from a title policy or other source showing all recorded liens or encumbrances affecting the property; and

(15) any other additional information requested by the City which is reasonably necessary in its opinion to arrive at a conclusion concerning whether there has been a Constitutional taking.

(d) **Review.** The City Council or its designee shall hear all the evidence related to and submitted in connection with the request for review to determine whether or not the action by the City constitutes a Constitutional taking as defined herein, including consideration of the following:

(1) whether the physical taking or exaction of the private real property bears an essential nexus to a legitimate governmental interest;

(2) whether a legitimate governmental interest exists for the action taken by the City;  
and

(3) whether the taking or exaction is roughly proportionate and reasonably related, on an individual property basis, both in nature and extent, to the impact caused by the activities that are the subject of the decision being reviewed.

(e) **Decision.** The City Council or its designee shall render a final decision on the review within fourteen (14) days from the date the complete application for review was submitted to the City Recorder. The decision of the City Council or its designee regarding the results of the review shall be given in writing to the applicant and the official, employee, board, commission or council that rendered the final decision that gave rise to the Constitutional taking claim. When determined to be necessary and appropriate, the reviewing body shall make a recommendation to the official, employee, board, commission or council that made the decision that gave rise to the Constitutional taking claim.

(f) **Failure to Render Decision.** If the City fails to hear and decide the appeal within fourteen (14) days, the acting body's decision or action is presumed to be approved.

**2A-05-040. Limitations.**

The guidelines set forth herein, and any decision rendered pursuant to the provisions of this Chapter, are advisory only and shall not be construed to expand or limit the scope of the City's liability for a Constitutional taking. The City shall have no legal liability to any person, firm or entity of any nature whatsoever and a court may not impose liability upon the City for failure to comply with the provisions of this Chapter.